one of the darker moments in the Senate history, perhaps one of even the darkest.

Leader MCCONNELL has just said he wants to go by the Clinton rules. Then why did he change them, in four important ways at minimum, to all make the trial less transparent, less clear, and with less evidence? He said he wanted to get started in exactly the same way. It turns out, contrary to what the leader said—I am amazed he could say it with a straight face—that the rules are the same as the Clinton rules. The rules are not even close to the Clinton rules.

Unlike the Clinton rules, the McConnell resolution does not admit the record of the House impeachment proceedings into evidence. Leader MCCONNELL wants a trial with no existing evidence and no new evidence. A trial without evidence is not a trial; it is a coverup.

Second, unlike the Clinton rules, the McConnell resolution limits presentation by the parties to 24 hours per side over only 2 days. We start at 1, 12 hours a day, we are at 1 a.m., and that is without breaks. It will be later. Leader MCCONNELL wants to force the managers to make important parts of their case in the dark of night.

No. 3, unlike the Clinton rules, the McConnell resolution places an additional hurdle to get witnesses and documents by requiring a vote on whether such motions are even in order. If that vote fails, then no motions to subpoena witnesses and documents will be in order.

I don't want anyone on the other side to say: I am going to vote no first on witnesses, but then later I will determine—if they vote for McConnell's resolution, they are making it far more difficult to vote in the future, later on in the trial.

And finally, unlike the Clinton rules, the McConnell resolution allows a motion to dismiss at any time—any time—in the trial.

In short, contrary to what the leader has said, the McConnell rules are not at all like the Clinton rules. The Republican leader's resolution is based neither in precedent nor in principle. It is driven by partisanship and the politics of the moment.

Today I will be offering amendments to fix the many flaws in Leader MCCONNELL's deeply unfair resolution and seek the witnesses and documents we have requested, beginning with an amendment to have the Senate subpoena White House documents.

Let me be clear. These amendments are not dilatory. They only seek one thing: the truth. That means relevant documents. That means relevant witnesses. That is the only way to get a fair trial, and everyone in this body knows it.

Each Senate impeachment trial in our history, all 15 that were brought to completion, feature witnesses—every single one.

The witnesses we request are not Democrats. They are the President's own men. The documents are not Democratic documents. They are documents, period. We don't know if the evidence of the witnesses or the documents will be exculpatory to the President or incriminating, but we have an obligation—a solemn obligation, particularly now during this most deep and solemn part of our Constitution—to seek the truth and then let the chips fall where they may.

My Republican colleagues have offered several explanations for opposing witnesses and documents at the start of the trial. None of them has much merit. Republicans have said we should deal with the question of witnesses later in the trial. Of course, it makes no sense to hear both sides present their case first and then afterward decide if the Senate should hear evidence. The evidence is supposed to inform arguments, not come after they are completed.

Some Republicans have said the Senate should not go beyond the House record by calling any witnesses, but the Constitution gives the Senate the sole power to try impeachments—not the sole power to review, not the sole power to rehash but to try.

Republicans have called our request for witnesses and documents political. If seeking the truth is political, then the Republican Party is in serious trouble.

The White House has said that the Articles of Impeachment are brazen and wrong. Well, if the President believes his impeachment is so brazen and wrong, why won't he show us why? Why is the President so insistent that no one come forward, that no documents be released? If the President's case is so weak, that none of the President's men can defend him under oath, shame on him and those who allow it to happen. What is the President hiding? What are our Republican colleagues hiding? If they weren't afraid of the truth, they would say: Go right ahead, get at the truth, get witnesses, get documents.

In fact, at no point over the last few months have I heard a single, solitary argument on the merits of why witnesses and documents should not be part of the trial. No Republicans explained why less evidence is better than more evidence.

Nevertheless, Leader MCCONNELL is poised to ask the Senate to begin the first impeachment trial of a President in history without witnesses; that rushes through the arguments as quickly as possible; that, in ways both shameless and subtle, will conceal the truth—the truth—from the American people.

Leader MCCONNELL claimed that the House ''ran the most rushed, least thorough, and most unfair impeachment inquiry in modern history.'' The truth is, Leader MCCONNELL is plotting the most rushed, least thorough, and most unfair impeachment trial in modern history, and it begins today.

The Senate has before it a very straightforward question. The President is accused of coercing a foreign power to interfere in our elections to help himself. It is the job of the Senate to determine if these very serious charges are true. The very least we can do is examine the facts, review the documents, hear the witnesses, try the case, not run from it, not hide from it—try it.

If the President commits high crimes and misdemeanors and Congress refuses to act, refuses even to conduct a fair trial of his conduct, then Presidents—this President and future Presidents—can commit impeachable crimes with impunity, and the order and rigor of our democracy will dramatically decline.

The fail-safe—the final fail-safe of our democracy will be rendered mute. The most powerful check on the Executive—the one designed to protect the people from tyranny—will be erased.

In a short time, my colleagues, each of us, will face a choice about whether to begin this trial in search of the truth or in service of the President's desire to cover it up, whether the Senate will conduct a fair trial and a full airing of the facts or rush to a predetermined political outcome.

My colleagues, the eyes of the Nation, the eyes of history, the eyes of the Founding Fathers are upon us. History will be our final judge. Will Senators rise to the occasion?

I yield the floor.

RESERVATION OF LEADER TIME

The PRESIDING OFFICER. Under the previous order, the leadership time is reserved.

CONCLUSION OF MORNING BUSINESS

The PRESIDING OFFICER. Morning business is closed.

RECESS SUBJECT TO THE CALL OF THE CHAIR

The PRESIDING OFFICER. Under the previous order, the Senate stands in recess, subject to the call of the Chair.

Thereupon, the Senate, at 12:58 p.m., recessed subject to the call of the Chair and reassembled at 1:18 p.m., when called to order by the CHIEF JUSTICE.

TRIAL OF DONALD J. TRUMP, PRESIDENT OF THE UNITED STATES

The CHIEF JUSTICE. The Senate will convene as a Court of Impeachment.

THE JOURNAL

The CHIEF JUSTICE. If there is no objection, the Journal of proceedings of the trial are approved to date.

The CHIEF JUSTICE. I am aware of one Senator present who was unable to take the impeachment oath last Thursday.

Will he please rise and raise his right hand and be sworn.

Do you solemnly swear that in all things pertaining to the trial of the impeachment of Donald John Trump, President of the United States, now pending, you will do impartial justice according to the Constitution and laws, so help you God?

Mr. INHOFE. I do.

The CHIEF JUSTICE. The Secretary will note the name of the Senator who has just taken the oath and will present the oath book to him for signature.

The CHIEF JUSTICE. The Sergeant at Arms will make the proclamation.

The Sergeant at Arms, Michael C. Stenger, made proclamation as follows:

Hear ye! Hear ye! Hear ye! All persons are commanded to keep silent, on pain of imprisonment, while the Senate of the United States is sitting for the trial of the Articles of Impeachment exhibited by the House of Representatives against Donald John Trump, President of the United States.

The CHIEF JUSTICE. The majority leader is recognized.

Mr. MCCONNELL. Mr. Chief Justice, I would like to state that, for the information of all Senators, the trial briefs filed yesterday by the parties have been printed and are now at each Senator's desk.

UNANIMOUS CONSENT AGREEMENT—AUTHORITY TO PRINT SENATE DOCUMENTS

The CHIEF JUSTICE. The following documents will be submitted to the Senate for printing in the Senate Journal: the precept, issued January 16, 2020; the writ of summons, issued on January 16, 2020; and the receipt of summons, dated January 16, 2020.

The following documents, which were received by the Secretary of the Senate, will be submitted to the Senate for printing in the Senate Journal, pursuant to the order of January 16, 2020: the answer of Donald John Trump, President of the United States, to the Articles of Impeachment exhibited by the House of Representatives against him on January 16, 2020, received by the Secretary of the Senate on January 18, 2020; the trial brief filed by the House of Representatives, received by the Secretary of the Senate on January 18, 2020; the trial brief filed by the President, received by the Secretary of the Senate on January 20, 2020; the replication of the House of Representatives, received by the Secretary of the Senate on January 20, 2020; and the rebuttal brief filed by the House of Representatives, received by the Secretary of the Senate on January 21, 2020.

Without objection, the foregoing documents will be printed in the CONGRESSIONAL RECORD.

The documents follow:

[In Proceedings Before the United States Senate]

Answer of President Donald J. Trump

THE HONORABLE DONALD J. TRUMP, PRESIDENT OF THE UNITED STATES, HEREBY RESPONDS:

The Articles of Impeachment submitted by House Democrats are a dangerous attack on the right of the American people to freely choose their President. This is a brazen and unlawful attempt to overturn the results of the 2016 election and interfere with the 2020 election—now just months away. The highly partisan and reckless obsession with impeaching the President began the day he was inaugurated and continues to this day.

The Articles of Impeachment are constitutionally invalid on their face. They fail to allege any crime or violation of law whatsoever, let alone ''high Crimes and Misdemeanors,'' as required by the Constitution. They are the result of a lawless process that violated basic due process and fundamental fairness. Nothing in these Articles could permit even beginning to consider removing a duly elected President or warrant nullifying an election and subverting the will of the American people.

The Articles of Impeachment now before the Senate are an affront to the Constitution of the United States, our democratic institutions, and the American people. The Articles themselves—and the rigged process that brought them here—are a transparently political act by House Democrats. They debase the grave power of impeachment and the solemn responsibility that power entails. They must be rejected. The House process violated every precedent and every principle of fairness governing impeachment inquiries for more than 150 years. Even so, all that House Democrats have succeeded in proving is that the President did absolutely nothing wrong.

President Trump categorically and unequivocally denies each and every allegation in both Articles of Impeachment. The President reserves all rights and all available defenses to the Articles of Impeachment. For the reasons set forth in this Answer and in the forthcoming Trial Brief, the Senate must reject the Articles of Impeachment.

I. THE FIRST ARTICLE OF IMPEACHMENT MUST BE REJECTED

The first Article fails on its face to state an impeachable offense. It alleges no crimes at all, let alone ''high Crimes and Misdemeanors,'' as required by the Constitution. In fact, it alleges no violation of law whatsoever. House Democrats' ''abuse of power'' claim would do lasting damage to the separation of powers under the Constitution.

The first Article also fails on the facts, because President Trump has not in any way ''abused the powers of the Presidency.'' At all times, the President has faithfully and effectively executed the duties of his Office on behalf of the American people. The President's actions on the July 25, 2019, telephone call with President Volodymyr Zelensky of Ukraine (the ''July 25 call''), as well as on the earlier April 21, 2019, telephone call (the ''April 21 call''), and in all surrounding and related events, were constitutional, perfectly legal, completely appropriate, and taken in furtherance of our national interest.

President Trump raised the important issue of burden sharing on the July 25 call, noting that other European countries such as Germany were not carrying their fair share. President Trump also raised the important issue of Ukrainian corruption. President Zelensky acknowledged these concerns on that same call.

Despite House Democrats having run an entirely illegitimate and one-sided process, several simple facts were established that prove the President did nothing wrong:

First, the transcripts of both the April 21 call and the July 25 call make absolutely clear that the President did nothing wrong.

Second, President Zelensky and other Ukrainian officials have repeatedly confirmed that the call was ''good'' and ''normal,'' that there was no *quid pro quo,* and that no one pressured them on anything.

Third, the two individuals who have stated for the record that they spoke to the President about the subject actually exonerate him. Ambassador to the European Union Gordon Sondland stated that when he asked the President what he wanted from Ukraine, the President said: ''I want nothing. I want nothing. I want no *quid pro quo*.'' Senator Ron Johnson reported that, when he asked the President whether there was any connection between security assistance and investigations, the President responded: ''No way. I would never do that.'' House Democrats ignore these facts and instead rely entirely on assumptions, presumptions, and speculation from witnesses with no first-hand knowledge. Their accusations are founded exclusively on inherently unreliable hearsay that would never be accepted in any court in our country.

Fourth, the bilateral presidential meeting took place in the ordinary course, and the security assistance was sent, all without the Ukrainian government announcing any investigations.

Not only does the evidence collected by House Democrats refute each and every one of the factual predicates underlying the first Article, the transcripts of the April 21 call and the July 25 call disprove what the Article alleges. When the House Democrats realized this, Mr. Schiff created a fraudulent version of the July 25 call and read it to the American people at a congressional hearing, without disclosing that he was simply making it all up. The fact that Mr. Schiff felt the need to fabricate a false version of the July 25 call proves that he and his colleagues knew there was absolutely nothing wrong with that call.

House Democrats ran a fundamentally flawed and illegitimate process that denied the President every basic right, including the right to have counsel present, the right to cross-examine witnesses, and the right to present evidence. Despite all this, the information House Democrats assembled actually disproves their claims against the President. The President acted at all times with full constitutional and legal authority and in our national interest. He continued his Administration's policy of unprecedented support for Ulaaine, including the delivery of lethal military aid that was denied to the Ukrainians by the prior administration.

The first Article is therefore constitutionally invalid, founded on falsehoods, and must be rejected.

II. THE SECOND ARTICLE OF IMPEACHMENT MUST BE REJECTED

The second Article also fails on its face to state an impeachable offense. It does not allege any crime or violation of law whatsoever. To the contrary, the President's assertion of legitimate Executive Branch confidentiality interests grounded in the separation of powers cannot constitute obstruction of Congress.

Furthermore, the notion that President Trump obstructed Congress is absurd. President Trump acted with extraordinary and unprecedented *transparency* by declassifying and releasing the transcript of the July 25 call that is at the heart of this matter.

Following the President's disclosure of the July 25 call transcript, House Democrats issued a series of unconstitutional subpoenas for documents and testimony. They issued their subpoenas without a congressional vote and, therefore, without constitutional authority. They sought testimony from a number of the President's closest advisors despite the fact that, under longstanding, bipartisan practice of prior administrations of both political parties and similarly longstanding guidance from the Department of Justice, those advisors are absolutely immune from compelled testimony before Congress related to their official duties. And

they sought testimony disclosing the Executive Branch's confidential communications and internal decision-making processes on matters of foreign relations and national security, despite the well-established constitutional privileges and immunities protecting such information. As the Supreme Court has recognized, the President's constitutional authority to protect the confidentiality of Executive Branch information is at its apex in the field of foreign relations and national security. House Democrats also barred the attendance of Executive Branch counsel at witness proceedings, thereby preventing the President from protecting important Executive Branch confidentiality interests.

Notwithstanding these abuses, the Trump Administration replied appropriately to these subpoenas and identified their constitutional defects. Tellingly, House Democrats did not seek to enforce these constitutionally defective subpoenas in court. To the contrary, when one subpoena recipient sought a declaratory judgment as to the validity of the subpoena he had received, House Democrats quickly withdrew the subpoena to prevent the court from issuing a ruling.

The House may not usurp Executive Branch authority and may not bypass our Constitution's system of checks and balances. Asserting valid constitutional privileges and immunities cannot be an impeachable offense. The second Article is therefore invalid and must be rejected.

III. CONCLUSION

The Articles of Impeachment violate the Constitution. They are defective in their entirety. They are the product of invalid proceedings that flagrantly denied the President any due process rights. They rest on dangerous distortions of the Constitution that would do lasting damage to our structure of government.

In the the first Article, the House attempts to seize the President's power under Article II of the Constitution to determine foreign policy. In the second Article, the House attempts to control and penalize the assertion of the Executive Branch's constitutional privileges, while simultaneously seeking to destroy the Framers' system of checks and balances. By approving the Articles, the House violated our constitutional order, illegally abused its power of impeachment, and attempted to obstruct President Trump's ability to faithfully execute the duties of his Office. They sought to undermine his authority under Article II of the Constitution, which vests the entirety of ''[t]he executive Power'' in ''a President of the United States of America.''

In order to preserve our constitutional structure of government, to reject the poisonous partisanship that the Framers warned against, to ensure one-party political impeachment vendettas do not become the ''new normal,'' and to vindicate the will of the American people, the Senate must reject both Articles of Impeachment. In the end, this entire process is nothing more than a dangerous attack on the American people themselves and their fundamental right to vote.

JAY ALAN SEKULOW,
Counsel to President Donald J. Trump,
Washington, DC.
PAT A. CIPOLLONE,
Counsel to the President, The White House.

Dated this 18th day of January, 2020.

[In the Senate of the United States Sitting as a Court of Impeachment]

In re Impeachment of President Donald J. Trump

TRIAL MEMORANDUM OF THE UNITED STATES HOUSE OF REPRESENTATIVES IN THE IMPEACHMENT TRIAL OF PRESIDENT DONALD J. TRUMP

INTRODUCTION

President Donald J. Trump used his official powers to pressure a foreign government to interfere in a United States election for his personal political gain, and then attempted to cover up his scheme by obstructing Congress's investigation into his misconduct. The Constitution provides a remedy when the President commits such serious abuses of his office: impeachment and removal. The Senate must use that remedy now to safeguard the 2020 U.S. election, protect our constitutional form of government, and eliminate the threat that the President poses to America's national security.

The House adopted two Articles of Impeachment against President Trump: the first for abuse of power, and the second for obstruction of Congress.[1] The evidence overwhelmingly establishes that he is guilty of both. The only remaining question is whether the members of the Senate will accept and carry out the responsibility placed on them by the Framers of our Constitution and their constitutional Oaths.

ABUSE OF POWER

President Trump abused the power of his office by pressuring the government of Ukraine to interfere in the 2020 U.S. Presidential election for his own benefit. In order to pressure the recently elected Ukrainian President, Volodymyr Zelensky, to announce investigations that would advance President Trump's political interests and his 2020 reelection bid, the President exercised his official power to withhold from Ukraine critical U.S. government support—$391 million of vital military aid and a coveted White House meeting.[2]

During a July 25, 2019 phone call, after President Zelensky expressed gratitude to President Trump for American military assistance, President Trump immediately responded by asking President Zelensky to ''do us a favor though.''[3] The ''favor'' he sought was for Ukraine to publicly announce two investigations that President Trump believed would improve his domestic political prospects.[4] One investigation concerned former Vice President Joseph Biden, Jr.—a political rival in the upcoming 2020 election—and the false claim that, in seeking the removal of a corrupt Ukrainian prosecutor four years earlier, then-Vice President Biden had acted to protect a company where his son was a board member.[5] The second investigation concerned a debunked conspiracy theory that Russia did not interfere in the 2016 Presidential election to aid President Trump, but instead that Ukraine interfered in that election to aid President Trump's opponent, Hillary Clinton.[6]

These theories were baseless. There is no credible evidence to support the allegation that the former Vice President acted improperly in encouraging Ukraine to remove an incompetent and corrupt prosecutor in 2016.[7] And the U.S. Intelligence Community, the Senate Select Committee on Intelligence, and Special Counsel Robert S. Mueller, III unanimously determined that Russia, not Ukraine, interfered in the 2016 U.S. Presidential election ''in sweeping and systematic fashion'' to help President Trump's campaign.[8] In fact, the theory that Ukraine, rather than Russia, interfered in the 2016 election has been advanced by Russia's intelligence services as part of Russia's propaganda campaign.[9]

Although these theories were groundless, President Trump sought a public announcement by Ukraine of investigations into them in order to help his 2020 reelection campaign.[10] An announcement of a Ukrainian investigation into one of his key political rivals would be enormously valuable to President Trump in his efforts to win reelection in 2020—just as the FBI's investigation into Hillary Clinton's emails had helped him in 2016. And an investigation suggesting that President Trump did not benefit from Russian interference in the 2016 election would give him a basis to assert—falsely—that he was the victim, rather than the beneficiary, of foreign meddling in the last election. Ukraine's announcement of that investigation would bolster the perceived legitimacy of his Presidency and, therefore, his political standing going into the 2020 race.

Overwhelming evidence shows that President Trump solicited these two investigations in order to obtain a personal political benefit, not because the investigations served the national interest.[11] The President's own National Security Advisor characterized the efforts to pressure Ukraine to announce investigations in exchange for official acts as a ''drug deal.''[12] His Acting Chief of Staff candidly confessed that President Trump's decision to withhold security assistance was tied to his desire for an investigation into alleged Ukrainian interference in the 2020 election, stated that there ''is going to be political influence in foreign policy,'' and told the American people to ''get over it.''[13] Another one of President Trump's key national security advisors testified that the agents pursuing the President's bidding were ''involved in a domestic political errand,'' not national security policy.[14] And, immediately after speaking to President Trump by phone about the investigations, one of President Trump's ambassadors involved in carrying out the President's agenda in Ukraine said that President Trump ''did not give a [expletive] about Ukraine,'' and instead cared only about ''big stuff'' that benefitted him personally, like ''the Biden investigation.''[15]

To execute his scheme, President Trump assigned his personal attorney, Rudy Giuliani, the task of securing the Ukrainian investigations.[16] Mr. Giuliani repeatedly and publicly emphasized that he was *not* engaged in foreign policy but was instead seeking a personal benefit for his client, Donald Trump.[17]

President Trump used the vast powers of his office as President to pressure Ukraine into announcing these investigations. President Trump illegally withheld $391 million in taxpayer-funded military assistance to Ukraine that Congress had appropriated for expenditure in fiscal year 2019.[18] That assistance was a critical part of long-running bipartisan efforts to advance the security interests of the United States by ensuring that Ukraine is properly equipped to defend itself against Russian aggression.[19] Every relevant Executive Branch agency agreed that continued American support for Ukraine was in America's national security interests, but President Trump ignored that view and personally ordered the assistance held back, even after serious concerns—now confirmed by the Government Accountability Office (GAO)[20]—were raised within his Administration about the legality of withholding funding that Congress had already appropriated.[21] President Trump released the funding only after he got caught trying to use the security assistance as leverage to obtain foreign interference in his reelection campaign. When news of his scheme to withhold the funding broke, and shortly after investigative committees in the House opened an investigation, President Trump relented and released the aid.[22]

As part of the same pressure campaign, President Trump withheld a crucial White House meeting with President Zelensky—a meeting that he had previously promised and that was a shared goal of both the United States and Ukraine.[23] Such face-to-face Oval Office meetings with a U.S. President are immensely important for international credibility.[24] In this case, an Oval Office meeting with President Trump was critical to the newly elected Ukrainian President because it would signal to Russia—which had invaded Ukraine in 2014 and still occupied Ukrainian territory—that Ukraine could count on American support.[25] That meeting still has not occurred, even though President Trump has met with over a dozen world leaders at the White House since President Zelensky's election—including an Oval Office meeting with Russia's top diplomat.[26]

President Trump's solicitation of foreign interference in our elections to secure his own political success is precisely why the Framers of our Constitution provided Congress with the power to impeach a corrupt President and remove him from office. One of the Founding generation's principal fears was that foreign governments would seek to manipulate American elections—the defining feature of our self-government. Thomas Jefferson and John Adams warned of ''foreign Interference, Intrigue, Influence'' and predicted that, ''as often as Elections happen, the danger of foreign Influence recurs.''[27] The Framers therefore would have considered a President's attempt to corrupt America's democratic processes by demanding political favors from foreign powers to be a singularly pernicious act. They designed impeachment as the remedy for such misconduct because a President who manipulates U.S. elections to his advantage can avoid being held accountable by the voters through those same elections. And they would have viewed a President's efforts to encourage foreign election interference as all the more dangerous where, as here, those efforts are part of an ongoing pattern of misconduct for which the President is unrepentant.

The House of Representatives gathered overwhelming evidence of President Trump's misconduct, which is summarized in the attached Statement of Material Facts and in the comprehensive reports prepared by the House Permanent Select Committee on Intelligence and the Committee on the Judiciary.[28] On the strength of that evidence, the House approved the First Article of Impeachment against President Trump for abuse of power.[29] The Senate should now convict him on that Article. President Trump's continuing presence in office undermines the integrity of our democratic processes and endangers our national security.

OBSTRUCTION OF CONGRESS

President Trump obstructed Congress by undertaking an unprecedented campaign to prevent House Committees from investigating his misconduct. The Constitution entrusts the House with the ''sole Power of Impeachment.''[30] The Framers thus ensured what common sense requires—that the House, and not the President, determines the existence, scope, and procedures of an impeachment investigation into the President's conduct. The House cannot conduct such an investigation effectively if it cannot obtain information from the President or the Executive Branch about the Presidential misconduct it is investigating. Under our constitutional system of divided powers, a President cannot be permitted to hide his offenses from view by refusing to comply with a Congressional impeachment inquiry and ordering Executive Branch agencies to do the same. That conclusion is particularly important given the Department of Justice's position that the President cannot be indicted. If the President could both avoid accountability under the criminal laws and preclude an effective impeachment investigation, he would truly be above the law.

But that is what President Trump has attempted to do, and why President Trump's conduct is the Framers' worst nightmare. He directed his Administration to defy every subpoena issued in the House's impeachment investigation.[31] At his direction, the White House, Department of State, Department of Defense, Department of Energy, and Office of Management and Budget (OMB) refused to produce a single document in response to those subpoenas.[32] Several witnesses also followed President Trump's orders, defying requests for voluntary appearances and lawful subpoenas, and refusing to testify.[33] And President Trump's interference in the House's impeachment inquiry was not an isolated incident—it was consistent with his past efforts to obstruct the Special Counsel's investigation into Russian interference in the 2016 election.[34]

By categorically obstructing the House's impeachment inquiry, President Trump claimed the House's sole impeachment power for himself and sought to shield his misconduct from Congress and the American people. Although his sweeping cover-up effort ultimately failed—seventeen public officials courageously upheld their duty, testified, and provided documentary evidence of the President's wrongdoing[35]—his obstruction will do long-lasting and potentially irreparable damage to our constitutional system of divided powers if it goes unchecked.

Based on the overwhelming evidence of the President's misconduct in attempting to thwart the impeachment inquiry, the House approved the Second Article of Impeachment, for obstruction of Congress.[36] The Senate should now convict President Trump on that Article. If it does not, future Presidents will feel empowered to resist any investigation into their own wrongdoing, effectively nullifying Congress's power to exercise the Constitution's most important safeguard against Presidential misconduct. That outcome would not only embolden this President to continue seeking foreign interference in our elections but would telegraph to future Presidents that they are free to engage in serious misconduct without accountability or repercussions.

The Constitution entrusts Congress with the solemn task of impeaching and removing from office a President who engages in ''Treason, Bribery, or other high Crimes and Misdemeanors.''[37] The impeachment power is an essential check on the authority of the President, and Congress must exercise this power when the President places his personal and political interests above those of the Nation. President Trump has done exactly that. His misconduct challenges the fundamental principle that Americans should decide American elections, and that a divided system of government, in which no single branch operates without the check and balance of the others, preserves the liberty we all hold dear.

The country is watching to see how the Senate responds. History will judge each Senator's willingness to rise above partisan differences, view the facts honestly, and defend the Constitution. The outcome of these proceedings will determine whether generations to come will enjoy a safe and secure democracy in which the President is not a king, and in which no one, particularly the President, is above the law.

BACKGROUND

I. Constitutional Grounds for Presidential Impeachment

To understand why President Trump must be removed from office now, it is necessary to understand why the Framers of our Constitution included the impeachment power as an essential part of the republic they created.

The Constitution entrusts Congress with the exclusive power to impeach the President and to convict and remove him from office. Article I vests the House with the ''sole Power of Impeachment,''[38] and the Senate with the ''sole Power to try all Impeachments'' and to ''convict[]'' upon a vote of two thirds of its Members.[39] The Constitution specifies that the President ''shall be removed from Office on Impeachment for, and Conviction of, Treason, Bribery, or other high Crimes and Misdemeanors.''[40] The Constitution further provides that the Senate may vote to permanently ''disqualif[y]'' an impeached President from government service.[41]

The President takes an oath to ''faithfully execute the Office of the President of the United States.''[42] Impeachment imposes a check on a President who violates that oath by using the powers of the office to advance his own interests at the expense of the national interest. Fresh from their experience under British rule by a king, the Framers were concerned that corruption posed a grave threat to their new republic. As George Mason warned the other delegates to the Constitutional Convention, ''if we do not provide against corruption, our government will soon be at an end.''[43] The Framers stressed that a President who ''act[s] from some corrupt motive or other'' or ''willfully abus[es] his trust'' must be impeached,[44] because the President ''will have great opportunitys of abusing his power.''[45]

The Framers recognized that a President who abuses his power to manipulate the democratic process cannot properly be held accountable by means of the very elections that he has rigged to his advantage.[46] The Framers specifically feared a President who abused his office by sparing ''no efforts or means whatever to get himself re-elected.''[47] Mason asked: ''Shall the man who has practised corruption & by that means procured his appointment in the first instance, be suffered to escape punishment, by repeating his guilt?''[48]

Thus, the Framers resolved to hold the President ''impeachable whilst in office'' as ''an essential security for the good behaviour of the Executive.''[49] By empowering Congress to immediately remove a President when his misconduct warrants it, the Framers established the people's elected representatives as the ultimate check on a President whose corruption threatened our democracy and the Nation's core interests.[50]

The Framers particularly feared that foreign influence could undermine our new system of self-government.[51] In his farewell address to the Nation, President George Washington warned Americans ''to be constantly awake, since history and experience prove that foreign influence is one of the most baneful foes of republican government.''[52] Alexander Hamilton cautioned that the ''most deadly adversaries of republican government'' may come ''chiefly from the desire in foreign powers to gain an improper ascendant in our councils.''[53] James Madison worried that a future President could ''betray his trust to foreign powers,'' which ''might be fatal to the Republic.''[54] And, of particular relevance now, in their personal correspondence about ''foreign Interference,'' Thomas Jefferson and John Adams discussed their apprehension that ''as often as Elections happen, the danger of foreign Influence recurs.''[55]

Guided by these concerns, the Framers included within the Constitution various

mechanisms to ensure the President's accountability and protect against foreign influence—including a requirement that Presidents be natural-born citizens of the United States,[56] prohibitions on the President's receipt of gifts, emoluments, or titles from foreign states,[57] prohibitions on profiting from the Presidency,[58] and, of course, the requirement that the President face reelection after a four-year Term.[59] But the Framers provided for impeachment as a final check on a President who sought foreign interference to serve his personal interests, particularly to secure his own reelection.

In drafting the Impeachment Clause, the Framers adopted a standard flexible enough to reach the full range of potential Presidential misconduct: ''Treason, Bribery, or other high Crimes and Misdemeanors.'' [60] The decision to denote ''Treason'' and ''Bribery'' as impeachable conduct reflects the Founding-era concerns over foreign influence and corruption. But the Framers also recognized that ''many great and dangerous offenses'' could warrant impeachment and immediate removal of a President from office.[61] These ''other high Crimes and Misdemeanors'' provided for by the Constitution need not be indictable criminal offenses. Rather, as Hamilton explained, impeachable offenses involve an ''abuse or violation of some public trust'' and are of ''a nature which may with peculiar propriety be denominated political, as they relate chiefly to injuries done immediately to the society itself.'' [62] The Framers thus understood that ''high crimes and misdemeanors'' would encompass acts committed by public officials that inflict severe harm on the constitutional order.[63]

II. The House's Impeachment of President Donald J. Trump and Presentation of This Matter to the Senate

Committees of the House have undertaken investigations into allegations of misconduct by President Trump and his Administration. On September 9, 2019, after evidence surfaced that the President and his associates were seeking Ukraine's assistance in the President's reelection, the House Permanent Select Committee on Intelligence, together with the Committees on Oversight and Reform and Foreign Affairs, announced a joint investigation into the President's conduct and issued document requests to the White House and State Department.[64]

On September 24, 2019, Speaker Nancy Pelosi announced that the House was ''moving forward with an official impeachment inquiry'' and directed the Committees to ''proceed with their investigations under that umbrella of [an] impeachment inquiry.'' [65] They subsequently issued multiple subpoenas for documents as well as requests and subpoenas for witness interviews and testimony.[66] On October 31, 2019, the House approved a resolution adopting procedures to govern the impeachment inquiry.[67]

Both before and after Speaker Pelosi's announcement, President Trump categorically refused to provide any information in response to the House's inquiry. He stated that ''we're fighting all the subpoenas,'' and that ''I have an Article II, where I have the right to do whatever I want as president.'' [68] Through his White House Counsel, the President later directed his Administration not to cooperate.[69] Heeding the President's directive, the Executive Branch did not produce any documents in response to subpoenas issued by the three investigating Committees,[70] and nine current or former Administration officials, including the President's top aides, continue to refuse to comply with subpoenas for testimony.[71]

Notwithstanding the President's attempted cover-up, seventeen current and former government officials courageously complied with their legal obligations and testified before the three investigating Committees in depositions or transcribed interviews that all Members of the Committees—as well as staff from the Majority and Minority—were permitted to attend.[72] Some witnesses produced documentary evidence in their possession. In late November 2019, twelve of these witnesses, including three requested by the Minority, testified in public hearings convened by the Intelligence Committee.[73]

Stressing the ''overwhelming'' evidence of misconduct already uncovered by the investigation, on December 3, 2019, the Intelligence Committee released a detailed nearly 300-page report documenting its findings, which it transmitted to the Judiciary Committee.[74] The Judiciary Committee held public hearings evaluating the constitutional standard for impeachment and the evidence against President Trump—in which the President's counsel was invited, but declined, to participate—and then reported two Articles of Impeachment to the House.[75]

On December 18, 2019, the House voted to impeach President Trump and adopted two Articles of Impeachment.[76] The First Article for Abuse of Power states that President Trump ''abused the powers of the Presidency'' by ''soliciting the Government of Ukraine to publicly announce investigations that would benefit his reelection, harm the election prospects of a political opponent, and influence the 2020 United States Presidential election to his advantage.'' [77] President Trump sought to ''pressure the Government of Ukraine to take these steps by conditioning official United States Government acts of significant value to Ukraine on its public announcement of the investigations.'' [78] President Trump undertook these acts ''for corrupt purposes in pursuit of personal political benefit'' [79] and ''used the powers of the Presidency in a manner that compromised the national security of the United States and undermined the integrity of the United States democratic process.'' [80] These actions were ''consistent'' with President Trump's ''previous invitations of foreign interference in United States elections,'' [81] and demonstrated that President Trump ''will remain a threat to national security and the Constitution if allowed to remain in office.'' [82]

The Second Article for Obstruction of Congress states that President Trump ''abused the powers of the Presidency in a manner offensive to, and subversive of, the Constitution'' when he ''directed the unprecedented, categorical, and indiscriminate defiance of subpoenas issued by the House of Representatives pursuant to its 'sole Power of Impeachment.' '' [83] Without ''lawful cause or excuse, President Trump directed Executive Branch agencies, offices, and officials not to comply with those subpoenas'' and ''thus interposed the powers of the Presidency against the lawful subpoenas of the House of Representatives, and assumed to himself functions and judgments necessary to the exercise of the 'sole Power of Impeachment' vested by the Constitution in the House of Representatives.'' [84] The President's ''complete defiance of an impeachment inquiry . . . served to cover up the President's own repeated misconduct and to seize and control the power of impeachment.'' [85] President Trump's misconduct was ''consistent'' with his ''previous efforts to undermine United States Government investigations into foreign interference in United States elections,'' [86] demonstrated that he has ''acted in a manner grossly incompatible with self-governance,'' and established that he ''will remain a threat to the Constitution if allowed to remain in office.'' [87]

ARGUMENT

I. The Senate Should Convict President Trump of Abuse of Power

President Trump abused the power of the Presidency by pressuring a foreign government to interfere in an American election on his behalf.[88] He solicited this foreign interference to advance his reelection prospects at the expense of America's national security and the security of Ukraine, a vulnerable American ally at war with Russia, an American adversary.[89] His effort to gain a personal political benefit by encouraging a foreign government to undermine America's democratic process strikes at the core of misconduct that the Framers designed impeachment to protect against. President Trump's abuse of power requires his conviction and removal from office.

An officer abuses his power if he exercises his official power to obtain an improper personal benefit while ignoring or undermining the national interest.[90] An abuse that involves an effort to solicit foreign interference in an American election is uniquely dangerous. President Trump's misconduct is an impeachable abuse of power.[91]

A. President Trump Exercised His Official Power to Pressure Ukraine into Aiding His Reelection

After President Zelensky won a landslide victory in Ukraine in April 2019, President Trump pressured the new Ukrainian President to help him win his own reelection by announcing investigations that were politically favorable for President Trump and designed to harm his political rival.[92]

First, President Trump sought to pressure President Zelensky publicly to announce an investigation into former Vice President Biden and a Ukrainian gas company, Burisma Holdings, on whose board Biden's son sat.[93] As Vice President, Biden had in late 2015 encouraged the government of Ukraine to remove a Ukrainian prosecutor general who had failed to combat corruption.[94] The Ukrainian parliament removed the prosecutor in March 2016.[95] President Trump and his allies have asserted that the former Vice President acted in order to stop an investigation of Burisma and thereby protect his son.[96] This is false. There is no evidence that Vice President Biden acted improperly.[97] He was carrying out official United States policy—with the backing of the international community and bipartisan support in Congress—when he sought the removal of the prosecutor, who was himself corrupt.[98] In addition, the prosecutor's removal made it *more likely* that the investigation into Burisma would be pursued.[99] President Trump nevertheless sought an official Ukrainian announcement of an investigation into this theory.[100]

Second, President Trump sought to pressure President Zelensky publicly to announce an investigation into a conspiracy theory that Ukraine had colluded with the Democratic National Committee to interfere in the 2016 U.S. Presidential election in order to help the campaign of Hillary Clinton against then-candidate Donald Trump.[101] This theory was not only pure fiction, but malign Russian propaganda.[102] In the words of one of President Trump's own top National Security Council officials, President Trump's theory of Ukrainian election interference is ''a fictional narrative that is being perpetrated and propagated by the Russian security services themselves'' to deflect from Russia's culpability and to drive a wedge between the United States and Ukraine.[103] President Trump's own FBI Director confirmed that American law enforcement has ''no information that indicates that Ukraine interfered with the 2016 presidential election.'' [104] The Senate Select Committee on

Intelligence similarly concluded that Russia, not Ukraine, interfered in the 2016 U.S. Presidential election.[105] President Trump nevertheless seized on the false theory and sought an announcement of an investigation that would give him a basis to assert that Ukraine rather than Russia interfered in the 2016 election. Such an investigation would eliminate a perceived threat to his own legitimacy and boost his political standing in advance of the 2020 election.[106]

In furtherance of the corrupt scheme, President Trump exercised his official power to remove a perceived obstacle to Ukraine's pursuit of the two sham investigations. On April 24, 2019—one day after the media reported that former Vice President Biden would formally enter the 2020 U.S. Presidential race[107]—the State Department executed President Trump's order to recall the U.S. ambassador to Ukraine, a well-regarded career diplomat and anti-corruption crusader.[108] President Trump needed her ''out of the way'' because ''she was going to make the investigations difficult for everybody.''[109] President Trump then proceeded to exercise his official power to pressure Ukraine into announcing his desired investigations by withholding valuable support that Ukraine desperately needed and that he could leverage only by virtue of his office: $391 million in security assistance and a White House meeting.

WITHHELD SECURITY ASSISTANCE

President Trump illegally ordered the Office of Management and Budget to withhold $391 million in taxpayer-funded military and other security assistance to Ukraine.[110] This assistance would provide Ukraine with sniper rifles, rocket-propelled grenade launchers, counter-artillery radars, electronic warfare detection and secure communications, and night vision equipment, among other military equipment, to defend itself against Russian forces that occupied part of eastern Ukraine since 2014.[111] The new and vulnerable government headed by President Zelensky urgently needed this assistance—both because the funding itself was critically important to defend against Russia, and because the funding was a highly visible sign of American support for President Zelensky in his efforts to negotiate an end to the conflict from a position of strength.[112]

Every relevant Executive Branch agency supported the assistance, which also had broad bipartisan support in Congress.[113] President Trump, however, personally ordered OMB to withhold the assistance after the bulk of it had been appropriated by Congress and all of the Congressionally mandated conditions on assistance—including anti-corruption reforms—had been met.[114] The Government Accountability Office has determined that the President's hold was illegal and violated the Impoundment Control Act, which limits the President's authority to withhold funds that Congress has appropriated.[115]

The evidence is clear that President Trump conditioned release of the vital military assistance on Ukraine's announcement of the sham investigations. During a telephone conversation between the two Presidents on July 25, immediately after President Zelensky raised the issue of U.S. military support for Ukraine, President Trump replied: ''I would like you to do us a favor though.''[116] President Trump then explained that the ''favor'' he wanted President Zelensky to perform was to begin the investigations, and President Zelensky confirmed his understanding that the investigations should be done ''openly.''[117] In describing whom he wanted Ukraine to investigate, President Trump mentioned only two people: former Vice President Biden and his son.[118] And in describing the claim of foreign interference in the 2016 election, President Trump declared that ''they say a lot of it started with Ukraine,'' and that ''[w]hatever you can do, it's very important that you do it if that's possible.''[119] Absent from the discussion was any mention by President Trump of anti-corruption reforms in Ukraine.

One of President Trump's chief agents for carrying out the President's agenda in Ukraine, Ambassador Gordon Sondland, testified that President Trump's effort to condition release of the much-needed security assistance on an announcement of the investigations was as clear as ''two plus two equals four.''[120] Sondland communicated to President Zelensky's advisor that Ukraine would likely not receive assistance unless President Zelensky publicly announced the investigations.[121] And President Trump later confirmed to Ambassador Sondland that President Zelensky ''must announce the opening of the investigations and he should want to do it.''[122]

President Trump ultimately released the military assistance, but only after the press publicly reported the hold, after the President learned that a whistleblower within the Intelligence Community had filed a complaint about his misconduct, and after the House publicly announced an investigation of the President's scheme. In short, President Trump released the security assistance for Ukraine only after he got caught.[123]

WITHHELD WHITE HOUSE MEETING

On April 21, 2019, the day President Zelensky was elected, President Trump invited him to a meeting at the White House.[124] The meeting would have signaled American support for the new Ukrainian administration, its strong anti-corruption reform agenda, and its efforts to defend against Russian aggression and to make peace.[125] President Trump, however, exercised his official power to withhold the meeting as leverage in his scheme to pressure President Zelensky into announcing the investigations to help his reelection campaign.

The evidence is unambiguous that President Trump and his agents conditioned the White House meeting on Ukraine's announcement of the investigations. Ambassador Sondland testified that President Trump wanted ''a public statement from President Zelensky'' committing to the investigations as a ''prerequisite[]'' for the White House meeting.[126] Ambassador Sondland further testified: ''I know that members of this committee frequently frame these complicated issues in the form of a simple question: Was there a quid pro quo? As I testified previously with regard to the requested White House call and the White House meeting, the answer is yes.''[127]

To this day, President Trump maintains leverage over President Zelensky. A White House meeting has still not taken place,[128] and President Trump continues publicly to urge Ukraine to conduct these investigations.[129]

B. President Trump Exercised Official Power to Benefit Himself Personally

Overwhelming evidence demonstrates that the announcement of investigations on which President Trump conditioned the official acts had no legitimate policy rationale, and instead were corruptly intended to assist his 2020 reelection campaign.[130]

First, although there was no basis for the two conspiracy theories that President Trump advanced,[131] public announcements that these theories were being investigated would be of immense political value to him—and him alone. The public announcement of an investigation of former Vice President Biden would yield enormous political benefits for President Trump, who viewed the former Vice President as a serious political rival in the 2020 U.S. Presidential election. Unsurprisingly, President Trump's efforts to advance the conspiracy theory accelerated after news broke that Vice President Biden would run for President in 2020.[132] President Trump benefited from such an announcement of a criminal investigation into his Presidential opponent in 2016.[133] An announcement of a criminal investigation regarding a 2020 rival would likewise be extremely helpful to his reelection prospects.

President Trump would similarly have viewed an investigation into Ukrainian interference in the 2016 election as helpful in undermining the conclusion that he had benefitted from Russian election interference in 2016, and that he was the preferred candidate of President Putin—both of which President Trump viewed as calling into question the legitimacy of his Presidency. An announcement that Ukraine was investigating its own alleged 2016 election interference would have turned these facts on their head. President Trump would have grounds to claim—falsely—that he was elected President in 2016 not because he was the beneficiary of Russian election interference, *but in spite of* Ukrainian election interference aimed at helping his opponent.

Second, agents and associates of President Trump who helped carry out his agenda in Ukraine confirmed that his efforts to pressure President Zelensky into announcing the desired investigations were intended for his personal political benefit rather than for a legitimate policy purpose. For example, after speaking with President Trump, Ambassador Sondland told a colleague that President Trump ''did not give a [expletive] about Ukraine,'' and instead cared only about ''big stuff'' that benefitted him personally ''like the Biden investigation that Mr. Giuliani was pushing.''[134] And Mick Mulvaney, President Trump's Acting Chief of Staff, acknowledged to a reporter that there was a quid pro quo with Ukraine involving the military aid, conceded that ''[t]here is going to be political influence in foreign policy,'' and stated, ''I have news for everybody: get over it.''[135]

Third, the involvement of President Trump's personal attorney, Mr. Giuliani—who has professional obligations to the President but not the Nation—underscores that President Trump sought the investigations for personal and political reasons rather than legitimate foreign policy reasons. Mr. Giuliani openly and repeatedly acknowledged that he was pursuing the Ukrainian investigations to advance the President's interests, stating: ''this isn't foreign policy.''[136] Instead, Mr. Giuliani said that he was seeking information that ''will be very, very helpful to my client.''[137] Mr. Giuliani made similar representations to the Ukrainian government. In a letter to President-elect Zelensky, Mr. Giuliani stated that he ''represent[ed] him [President Trump] *as a private citizen*, not as President of the United States'' and was acting with the President's ''knowledge and consent.''[138] President Trump placed Mr. Giuliani at the hub of the pressure campaign on Ukraine, and directed U.S. officials responsible for Ukraine to ''talk to Rudy.''[139] Indeed, during their July 25 call, President Trump pressed President Zelensky to speak with Mr. Giuliani directly, stating: ''Rudy very much knows what's happening and he is a very capable guy. If you could speak to him that would be great.''[140]

Fourth, President Trump's pursuit of the sham investigations marked a dramatic deviation from longstanding bipartisan American foreign policy goals in Ukraine. Legitimate investigations could have been recognized as an anti-corruption foreign policy

goal, but there was no factual basis for an investigation into the Bidens or into supposed Ukrainian interference in the 2016 election.[141] To the contrary, the requested investigations were precisely the type of political investigations that American foreign policy dissuades other countries from undertaking. That explains why the scheme to obtain the announcements was pursued through the President's chosen political appointees and his personal attorney;[142] why Trump Administration officials attempted to keep the scheme from becoming public due to its ''sensitive nature'';[143] why no credible explanation for the hold on security assistance was provided even within the U.S. government;[144] why, over Defense Department objections, President Trump and his allies violated the law by withholding the aid;[145] and why, after the scheme was uncovered, President Trump falsely claimed that his pursuit of the investigations did not involve a quid pro quo.[146]

Fifth, American and Ukrainian officials alike saw President Trump's scheme for what it was: improper and political. As we expect the testimony of Ambassador John Bolton would confirm, President Trump's National Security Advisor stated that he wanted no ''part of whatever drug deal'' President Trump's agents were pursuing in Ukraine.[147] Dr. Hill testified that Ambassador Sondland was becoming involved in a ''domestic political errand'' in pressing Ukraine to announce the investigations.[148] Jennifer Williams, an advisor to Vice President Mike Pence, testified that the President's solicitation of investigations was a ''domestic political matter.''[149] Lt. Col. Alexander Vindman, the NSC's Director for Ukraine, testified that ''[i]t is improper for the President of the United States to demand a foreign government investigate a U.S. citizen and a political opponent.''[150] William Taylor, who took over as Chargé d'Affaires in Kyiv after President Trump recalled Ambassador Yovanovitch, emphasized that ''I think it's crazy to withhold security assistance for help with a political campaign.''[151] And George Kent, a State Department official, testified that ''asking another country to investigate a prosecution for political reasons undermines our advocacy of the rule of law.''[152]

Ukrainian officials also understood that President Trump's corrupt effort to solicit the sham investigations would drag them into domestic U.S. politics. In response to the President's efforts, a senior Ukrainian official conveyed to Ambassador Taylor that President Zelensky ''did not want to be used as a pawn in a U.S. reelection campaign.''[153] Another Ukrainian official later stated that ''it's critically important for the west not to pull us into some conflicts between their ruling elites[.]''[154] And when Ambassador Kurt Volker tried to warn President Zelensky's advisor against investigating President Zelensky's former political opponent—the prior Ukrainian president—the advisor retorted, ''What, you mean like asking us to investigate Clinton and Biden?''[155] David Holmes, a career diplomat at the U.S. Embassy in Kyiv, highlighted this hypocrisy: ''While we had advised our Ukrainian counterparts to voice a commitment to following the rule of law and generally investigating credible corruption allegations,'' U.S. officials were making ''a demand that President Zelensky personally commit on a cable news channel to a specific investigation of President Trump's political rival.''[156]

Finally, there is no credible alternative explanation for President Trump's conduct. It is not credible that President Trump sought announcements of the investigations because he was in fact concerned with corruption in Ukraine or burden-sharing with our European allies, as he claimed after the scheme was uncovered.[157]

Before news of former Vice President Biden's candidacy broke, President Trump showed no interest in corruption in Ukraine, and in prior years he approved military assistance to Ukraine without controversy.[158] After his candidacy was announced, President Trump remained indifferent to anti-corruption measures beyond the two investigations he was demanding.[159] When he first spoke with President Zelensky on April 21, President Trump ignored the recommendation of his national security advisors and did not mention corruption at all—even though the purpose of the call was to congratulate President Zelensky on a victory based on an anti-corruption platform.[160] President Trump's entire policy team agreed that President Zelensky was genuinely committed to reforms, yet President Trump refused a White House meeting that the team advised would support President Zelensky's anti-corruption agenda.[161] President Trump's own Department of Defense, in consultation with the State Department, had certified in May 2019 that Ukraine satisfied all anti-corruption standards needed to receive the Congressionally appropriated military aid, yet President Trump nevertheless withheld that vital assistance.[162] He recalled without explanation Ambassador Yovanovitch, who was widely recognized as a champion in fighting corruption,[163] disparaged her while praising a corrupt Ukrainian prosecutor general,[164] and oversaw efforts to cut foreign programs tasked with combating corruption in Ukraine and elsewhere.[165]

Moreover, had President Trump truly sought to assist Ukraine's anti-corruption efforts, he would have focused on ensuring that Ukraine actually *conducted* investigations of the purported issues he identified. But actual investigations were never the point. President Trump was interested only in the *announcement* of the investigations because that announcement would accomplish his real goal—bolstering his reelection efforts.[166]

President Trump's purported concern about sharing the burden of assistance to Ukraine with Europe is equally without basis. From the time OMB announced the illegal hold until it was lifted, no credible reason was provided to Executive Branch agencies for the hold, despite repeated efforts by national security officials to obtain an explanation.[167] It was not until September—approximately two months after President Trump had directed the hold and after the President had learned of the whistleblower complaint—that the hold, for the first time, was attributed to the President's concern about other countries not contributing more to Ukraine.[168] If the President was genuinely concerned about burden-sharing, it makes no sense that he kept his own Administration in the dark about the issue for months, never made any contemporaneous public statements about it, never ordered a review of burden-sharing,[169] never ordered his officials to push Europe to increase their contributions,[170] and then released the aid without any change in Europe's contribution.[171] The concern about burden-sharing is an after-the-fact rationalization designed to conceal President Trump's abuse of power.

C. President Trump Jeopardized U.S. National Interests

President Trump's efforts to solicit foreign interference to help his reelection campaign is pernicious, but his conduct is all the more alarming because it endangered U.S. national security, jeopardized our alliances, and undermined our efforts to promote the rule of law globally.

Ukraine is a ''strategic partner of the United States'' on the front lines of an ongoing conflict with Russia.[172] The United States has approved military assistance to Ukraine with bipartisan support since 2014, and that assistance is critical to preventing Russia's expansion and aggression. This military assistance—which President Trump withheld in service of his own political interests—''saves lives'' by making Ukrainian resistance to Russia more effective.[173] It likewise advances American national security interests because, ''[i]f Russia prevails and Ukraine falls to Russian dominion, we can expect to see other attempts by Russia to expand its territory and influence.''[174] Indeed, the reason the United States provides assistance to the Ukrainian military is ''so that they can fight Russia over there, and we don't have to fight Russia here.''[175] President Trump's delay in providing the military assistance jeopardized these national security interests and emboldened Russia even though the funding was ultimately released—particularly because the delay occurred ''when Russia was watching closely to gauge the level of American support for the Ukrainian Government.''[176] But for a subsequent act of Congress, approximately $35 million of military assistance to Ukraine would have lapsed and been unavailable as a result of the President's abuse of power.[177]

The White House meeting that President Trump promised President Zelensky—but continues to withhold—would similarly have signaled to Russia that the United States stands behind Ukraine, showing ''U.S. support at the highest levels.''[178] By refusing to hold this meeting, President Trump denied Ukraine a showing of strength that could deter further Russian aggression and help Ukraine negotiate a favorable end to its war with Russia.[179] The withheld meeting also undercuts President Zelensky's domestic standing, diminishing his ability to advance his ambitious anti-corruption reforms.[180]

Equally troubling is that President Trump's scheme sent a clear message to our allies that the United States may capriciously withhold critical assistance for our President's personal benefit, causing our allies to constantly ''question the extent to which they can count on us.''[181] Because American leadership depends on ''the power of our example and the consistency of our purpose,'' President Trump's ''conduct undermines the U.S., exposes our friends, and widens the playing field for autocrats like President Putin.''[182] And President Trump's use of official acts to pressure Ukraine to announce politically motivated investigations harms our credibility in promoting democratic values and the rule of law in Ukraine and around the world. American credibility abroad ''is based on a respect for the United States,'' and ''if we damage that respect,'' American foreign policy cannot do its job.[183]

President Trump abused the powers of his office to invite foreign interference in an election for his own personal political gain and to the detriment of American national security interests. He abandoned his oath to faithfully execute the laws and betrayed his public trust. President Trump's misconduct presents a danger to our democratic processes, our national security, and our commitment to the rule of law. He must be removed from office.

II. The Senate Should Convict President Trump of Obstruction of Congress

In exercising its responsibility to investigate and consider the impeachment of a President of the United States, the House is constitutionally entitled to the relevant information from the Executive Branch concerning the President's misconduct.[184] The Framers, the courts, and past Presidents have recognized that honoring Congress's

right to information in an impeachment investigation is a critical safeguard in our system of divided powers.[185] Otherwise, a President could hide his own wrongdoing to prevent Congress from discovering impeachable misconduct, effectively nullifying Congress's impeachment power.[186] President Trump's sweeping effort to shield his misconduct from view and protect himself from impeachment thus works a grave constitutional harm and is itself an impeachable offense.

A. The House Is Constitutionally Entitled to the Relevant Information in an Impeachment Inquiry

The House has the power to issue subpoenas and demand compliance in an impeachment investigation. The Supreme Court has long recognized that, ''[w]ithout the power to investigate—including of course the authority to compel testimony, either through its own processes or through judicial trial—Congress could be seriously handicapped in its efforts to exercise its constitutional function wisely and effectively.'' [187] The Court has stressed that it is the ''duty of all citizens'' and ''their unremitting obligation to respond to subpoenas, to respect the dignity of the Congress and its committees and to testify fully with respect to matters within the province of proper investigation.'' [188] The Court has repeatedly emphasized that Congress's ''power of inquiry—with process to enforce it—is an essential and appropriate auxiliary to the legislative function.'' [189] Congress ''cannot legislate wisely or effectively in the absence of information.'' [190]

This principle is most compelling when the House exercises its ''sole Power of Impeachment.'' Congress's already ''broad'' investigatory authority,[191] and its need for information, are at their apex in an impeachment inquiry. The principle that the President cannot stand in the way of an impeachment investigation is ''of great consequence'' because, as Supreme Court Justice Joseph Story long ago explained, ''the president should not have the power of preventing a thorough investigation of [his] conduct, or of securing [himself] against the disgrace of a public conviction by impeachment, if [he] should deserve it.'' [192] A Presidential impeachment is ''a matter of the most critical moment to the Nation'' and it is ''difficult to conceive of a more compelling need than that of this country for an unswervingly fair inquiry based on all the pertinent information.'' [193] The Supreme Court thus recognized nearly 140 years ago that where the House or Senate is determining a ''question of . . . impeachment,'' there is ''no reason to doubt the right to compel the attendance of witnesses, and their answer to proper questions, in the same manner and by the use of the same means that courts of justice can in like cases.'' [194]

Like the Supreme Court, members of the earliest Congresses understood that, without ''the right to inspect every paper and transaction in any department . . . the power of impeachment could never be exercised with any effect.'' [195] Previous Presidents have acknowledged their obligation to comply with an impeachment investigation, explaining that such an inquiry ''penetrate[s] into the most secret recesses of the Executive Departments'' and ''could command the attendance of any and every agent of the Government, and compel them to produce all papers, public or private, official or unofficial, and to testify on oath to all facts within their knowledge.'' [196] That acknowledgement is a matter of common sense. An impeachment inquiry cannot root out bad actors if those same bad actors control the scope and nature of the inquiry.

President Trump is an aberration among Presidents in refusing any and all cooperation in a House impeachment investigation. Even President Nixon produced numerous documents in response to Congressional subpoenas and instructed ''[a]ll members of the White House Staff . . . [to] appear voluntarily when requested by the [House],'' to ''testify under oath,'' and to ''answer fully all proper questions'' [197]—consistent with the near uniform cooperation of prior Executive Branch officials who had been subject to impeachment investigations.[198]

Because President Nixon's production of records in response to the House Judiciary Committee's inquiry was incomplete in important respects, however, the Committee voted to adopt an article of impeachment for his obstruction of the inquiry.[199] As the Committee explained, in refusing to provide materials that the Committee ''deemed necessary'' to the impeachment investigation, President Nixon had ''substitute[ed] his judgment'' for that of the House and interposed ''the powers of the presidency against the lawful subpoenas of the House of Representatives, thereby assuming to himself functions and judgments necessary to exercise the sole power of impeachment vested by the Constitution in the House.'' [200] The Committee stated that it was not ''within the power of the President to conduct an inquiry into his own impeachment, to determine which evidence, and what version or portion of that evidence, is relevant and necessary to such an inquiry. These are matters which, under the Constitution, the House has the sole power to determine.'' [201] In the face of Congress's investigation and the mounting evidence of his misdeeds, President Nixon resigned before the House had the chance to impeach him for this misconduct.

B. President Trump's Obstruction of the Impeachment Inquiry Violates Fundamental Constitutional Principles

The Senate should convict President Trump of Obstruction of Congress as charged in the Second Article of Impeachment. President Trump unilaterally declared the House's investigation ''illegitimate.'' [202] President Trump's White House Counsel notified the House that ''President Trump cannot permit his Administration to participate in this partisan inquiry under these circumstances.'' [203] President Trump then directed his Administration categorically to withhold documents and testimony from the House.

The facts are undisputed. As charged in the Second Article of Impeachment, President Trump ''[d]irect[ed] the White House to defy a lawful subpoena by withholding the production of documents'' to the Committees; ''[d]irect[ed] other Executive Branch agencies and offices to defy lawful subpoenas and withhold the production of documents and records from the Committees''; and ''[d]irected current and former Executive Branch officials not to cooperate with the Committees.'' [204] In response to President Trump's directives, OMB, the Department of State, Department of Energy, and Department of Defense refused to produce any documents to the House, even though witness testimony has revealed that additional highly relevant records exist.[205] To date, the House Committees have not received a single document or record from these departments and agencies pursuant to subpoenas, which remain in effect.

President Trump personally demanded that his top aides refuse to testify in response to subpoenas, and nine Administration officials followed his directive and continue to defy subpoenas for testimony.[206] For example, when the Intelligence Committee issued a subpoena for Mick Mulvaney's testimony, he produced a November 8 letter from the White House stating: ''the President directs Mr. Mulvaney not to appear at the Committee's scheduled deposition on November 8, 2019.'' [207] When President Trump was unable to silence witnesses, he resorted to tactics to penalize and intimidate them. These efforts include President Trump's sustained attacks on the anonymous whistleblower, and his public statements designed to discourage witnesses from coming forward and to embarrass those who did testify.[208]

Refusing to comply with a Congressional impeachment investigation is not a constitutionally valid decision for a President to make. President Trump's unprecedented ''complete defiance of an impeachment inquiry . . . served to cover up the President's own repeated misconduct and to seize and control the power of impeachment.'' [209] President Trump's directive rejects one of the key features distinguishing our Republic from a monarchy: that ''[t]he President of the United States [is] liable to be impeached, tried, and, upon conviction . . . removed.'' [210] Allowing President Trump to avoid conviction on the Second Article would set a dangerous precedent for future Presidents to hide their misconduct from Congressional scrutiny during an impeachment inquiry without fear of accountability.

Notwithstanding President Trump's obstruction, the House obtained compelling evidence that he abused his power. The failure of President Trump's obstruction and attempted cover-up, however, does not excuse his misconduct. There can be no doubt that the withheld documents and testimony would provide Congress with highly pertinent information about the President's corrupt scheme. Indeed, witnesses have testified about specific withheld records concerning President Trump's July 25 call with President Zelensky and related materials,[211] and public reports have referred to additional responsive documents, including ''hundreds of documents that reveal extensive efforts to generate an after-the-fact justification for'' withholding the security aid.[212]

C. President Trump's Excuses for His Obstruction Are Meritless

President Trump has offered various unpersuasive excuses for his blanket refusal to comply with the House's impeachment inquiry. President Trump's refusal to provide information is not a principled assertion of executive privilege, but rather is a transparent attempt to cover-up wrongdoing and amass power that the Constitution does not give him, including the power to decide whether and when Congress can hold him accountable.

First, while Congressional investigators often accommodate legitimate Executive Branch interests, the President's blanket directive to all Executive Branch agencies and witnesses to defy Congressional subpoenas was not based on any actual assertion of executive privilege or identification of particular sensitive information.[213] The White House Counsel's letter alluded to ''long-established Executive Branch confidentiality interests and privileges'' that the State Department could theoretically invoke,[214] and the Justice Department's Office of Legal Counsel preemptively dismissed certain subpoenas as ''invalid'' on the ground that responsive information was ''*potentially* protected by executive privilege.'' [215] But neither document conveyed an actual assertion of executive privilege,[216] which would require, at a minimum, identification by the President of particular communications or documents containing protected material.[217] The White House cannot justify a blanket refusal to respond to Congressional subpoenas based on an executive or other privilege it never in fact invoked.

Regardless, executive privilege is inapplicable here, both because it may not be used

to conceal wrongdoing—particularly in an impeachment inquiry—and because the President and his agents have already diminished any confidentiality interests by speaking at length about these events in every forum except Congress.[218] President Trump has been impeached for Obstruction of Congress not based upon discrete invocations of privilege or immunity, but for his directive that the Executive Branch categorically stonewall the House impeachment inquiry by refusing to comply with all subpoenas.[219]

To the extent President Trump claims that he has concealed evidence to protect the Office of the President, the Framers considered and rejected that defense. Several delegates at the Constitutional Convention warned that the impeachment power would be ''destructive of [the executive's] independence.'' [220] But the Framers adopted an impeachment power anyway because, as Alexander Hamilton observed, ''the powers relating to impeachments'' are ''an essential check in the hands of [Congress] upon the encroachments of the executive.'' [221] The impeachment power does not exist to protect the Presidency; it exists to protect the nation from a corrupt and dangerous President like Donald Trump.

Second, President Trump has no basis for objecting to how the House conducted its impeachment proceedings. The Constitution vests the House with the ''sole Power of Impeachment'' [222] and the power to ''determine the Rules of its Proceedings.'' [223]

The rights that President Trump has demanded have never been recognized and have not been afforded in any prior Presidential impeachment.[224] President Trump has been afforded protections equal to or greater than those afforded Presidents Nixon and Clinton during their impeachment proceedings in the House.[225] Any claim that President Trump was entitled to due process rights modeled on a criminal trial during the entirety of the House impeachment inquiry ignores both law and history. A House impeachment inquiry cannot be compared to a criminal trial because the Senate, not the House, possesses the ''sole Power to try Impeachments.'' [226] The Constitution does not entitle President Trump to a separate, full trial first in the House.

Even indulging the analogy to a criminal trial, no person appearing before a prosecutor or grand jury deciding whether to bring charges would have the rights President Trump has claimed. As the House Judiciary Committee Chairman observed during Watergate, ''it is not a right but a privilege or a courtesy'' for the President to participate through counsel in House impeachment proceedings.[227] President Trump's demands are just another effort to obstruct the House in the exercise of its constitutional duty.

Third, President Trump's assertion that his impeachment for obstruction of Congress is invalid because the Committees did not first seek judicial enforcement of their subpoenas ignores again the Constitutional dictate that the House has sole authority to determine how to proceed with an impeachment. It also ignores President Trump's own arguments to the federal courts.

President Trump is telling one story to Congress while spinning a different tale in the courts. He is saying to Congress that the Committees should have sued the Executive Branch in court to enforce their subpoenas. But he has argued to that court that Congressional Committees *cannot sue* the Executive Branch to enforce their subpoenas.[228] President Trump cannot tell Congress that it must pursue him in court, while simultaneously telling the courts that they are powerless to enforce Congressional subpoenas.

President Trump's approach to the Judicial Branch thus mirrors his obstruction of the Legislative Branch—in his view, neither can engage in any review of his conduct. This position conveys the President's dangerously misguided belief that no other branch of government may check his power or hold him accountable for abusing it.[229] That belief is fundamentally incompatible with our form of government.

Months or years of litigation over each of the House's subpoenas is in any event no answer in this time-sensitive inquiry. The House's subpoena to former White House Counsel Don McGahn was issued in April 2019, but it is still winding its way through the courts over President Trump's strong opposition, even on an expedited schedule.[230] Litigating President Trump's direction that each subpoena be denied would conflict with the House's urgent duty to act on the compelling evidence of impeachable misconduct that it has uncovered. Further delay could also compromise the integrity of the 2020 election.

When the Framers entrusted the House with the sole power of impeachment, they obviously meant to equip the House with the necessary tools to discover abuses of power by the President. Without that authority, the Impeachment Clause would fail as an effective safeguard against tyranny. A system in which the President cannot be charged with a crime, as the Department of Justice believes, and in which he can nullify the impeachment power through blanket obstruction, as President Trump has done here, is a system in which the President is above the law. The Senate should convict President Trump for his categorical obstruction of the House's impeachment inquiry and ensure that this President, and any future President, cannot commit impeachable offenses and then avoid accountability by covering them up.

III. The Senate Should Immediately Remove President Trump From Office to Prevent Further Abuses

President Trump has demonstrated his continued willingness to corrupt free and fair elections, betray our national security, and subvert the constitutional separation of powers—all for personal gain. President Trump's ongoing pattern of misconduct demonstrates that he is an immediate threat to the Nation and the rule of law. It is imperative that the Senate convict and remove him from office now, and permanently bar him from holding federal office.

A. President Trump's Repeated Abuse of Power Presents an Ongoing Threat to Our Elections

President Trump's solicitation of Ukrainian interference in the 2020 election is not an isolated incident. It is part of his ongoing and deeply troubling course of misconduct that, as the First Article of Impeachment states, is ''consistent with President Trump's previous invitations of foreign interference in United States elections.'' [231]

These previous efforts include inviting Russian interference in the 2016 Presidential election.[232] As Special Counsel Mueller concluded, the ''Russian government interfered in the 2016 presidential election in sweeping and systematic fashion.'' [233] Throughout the 2016 election cycle, the Trump Campaign maintained significant contacts with agents of the Russian government who were offering damaging information concerning then-candidate Trump's political opponent, and Mr. Trump repeatedly praised—and even publicly requested—the release of politically charged Russian-hacked emails.[234] The Trump Campaign welcomed Russia's election interference because it ''expected it would benefit electorally from information stolen and released through Russian efforts.'' [235]

President Trump's recent actions confirm that public censure is insufficient to deter him from continuing to facilitate foreign interference in U.S. elections. In June 2019, President Trump declared that he sees ''nothing wrong with listening'' to a foreign power that offers information detrimental to a political adversary. In the President's words: ''I think I'd take it.'' [236] Asked whether such information should be reported to law enforcement, President Trump retorted: ''Give me a break, life doesn't work that way.'' [237]

Only one day after Special Counsel Mueller testified to Congress that the Trump Campaign welcomed and sought to capitalize on Russia's efforts to damage the President's political rival in 2016, President Trump spoke to President Zelensky, pressuring Ukraine to announce investigations to damage President Trump's political opponent in the 2020 election and undermine Special Counsel Mueller's findings.[238] President Trump still embraces that call as both ''routine'' and ''perfect.'' [239] President Trump's conduct would have horrified the Framers of our republic.

In its findings, the Intelligence Committee emphasized the ''proximate threat of further presidential attempts to solicit foreign interference in our next election.'' [240] That threat has not abated. In a sign that President Trump's corrupt efforts to encourage interference in the 2020 election persist, he reiterated his desire for Ukraine to investigate his political opponents even after the scheme was discovered and the impeachment inquiry was announced. When asked in October 2019 what he hoped President Zelensky would do about ''the Bidens,'' President Trump answered that it was ''very simple'' and he hoped Ukraine would ''start a major investigation.'' [241] Unsolicited, he added that ''China should [likewise] start an investigation into the Bidens.'' [242]

President Trump has also continued to engage Mr. Giuliani to pursue the sham investigations on his behalf.[243] One day after President Trump was impeached, Mr. Giuliani claimed that he gathered derogatory evidence against Vice President Biden during a fact-finding trip to Ukraine—a trip where he met with a current Ukrainian official who attended a KGB school in Moscow and has led calls in Ukraine to investigate Burisma and the Bidens.[244] During the trip, Mr. Giuliani tweeted: ''The conversation about corruption in Ukraine was based on compelling evidence of criminal conduct by then VP Biden, in 2016, that has not been resolved and until it is will be a major obstacle to the US assisting Ukraine with its anti-corruption reforms.'' [245] Not only was Mr. Giuliani perpetuating the false allegations against the former Vice President, but he was reiterating the threat that President Trump had used to pressure President Zelensky to announce the investigations: that U.S. assistance to Ukraine would be withheld until Ukraine pursued the sham investigations. Mr. Giuliani has stated that he and the President continue to be ''on the same page.'' [246] Ukraine, as well, understands that Mr. Giuliani represents President Trump's interests.[247]

President Trump's unrepentant embrace of foreign election interference illustrates the threat posed by his continued occupancy of the Office of the President. It also refutes the assertion that the consequences of his misconduct should be decided by the voters in the 2020 election. The aim of President Trump's Ukraine scheme was to corrupt the integrity of the 2020 election by enlisting a foreign power to give him an unfair advantage—in short, to cheat. That threat persists today.

B. President Trump's Obstruction of Congress Threatens Our Constitutional Order

President Trump's obstruction of the House's impeachment inquiry intended to

hold him accountable for his misconduct presents a serious danger to our constitutional checks and balances.

President Trump has made clear that he refuses to accept Congress's express—and exclusive—constitutional role in conducting impeachments.[248] He has thereby subverted the Constitution that he pledged to uphold when he was inaugurated on the steps of the Capitol. By his words and deeds, President Trump has obstructed the House's impeachment inquiry at every turn: He has dismissed impeachment as ''illegal, invalid, and unconstitutional'';[249] directed the Executive Branch not to comply with House subpoenas for documents and testimony;[250] and intimidated and threatened the anonymous intelligence community whistleblower as well as the patriotic public servants who honored their subpoenas and testified before the House.[251]

President Trump's obstruction is part of an ominous pattern of efforts ''to undermine United States Government investigations into foreign interference in United States elections.'' [252] Rather than assist Special Counsel Mueller's investigation into Russian interference in the 2016 election and his own campaign's exploitation of that foreign assistance, President Trump repeatedly used the powers of his office to impede it. Among other actions, President Trump directed the White House Counsel to fire the Special Counsel and then create a false record of the firing, tampered with witnesses in the Special Counsel's investigation, and repeatedly and publicly attacked the legitimacy of the investigation.[253] President Trump has instructed the former White House Counsel to defy a House Committee's subpoena for testimony concerning these matters and the Department of Justice has argued that the courts cannot even hear the Committee's action to enforce its subpoena.[254]

President Trump's current obstruction of Congress is, therefore, not the first time he has committed misconduct concerning a federal investigation into election interference and then sought to hide it. Allowing this pattern to continue without repercussion would send the clear message that President Trump is correct in his view that *no* governmental body can hold him accountable for wrongdoing. That view is erroneous and exceptionally dangerous.

C. The Senate Should Convict and Remove President Trump to Protect Our System of Government and National Security Interests

The Senate should convict and remove President Trump to avoid serious and long-term damage to our democratic values and the Nation's security.

If the Senate permits President Trump to remain in office, he and future leaders would be emboldened to welcome, and even enlist, foreign interference in elections for years to come. When the American people's faith in their electoral process is shaken and its results called into question, the essence of democratic self-government is called into doubt.

Failure to remove President Trump would signal that a President's personal interests may take precedence over those of the Nation, alarming our allies and emboldening our adversaries. Our leadership depends on the power of our example and the consistency of our purpose,'' but because of President Trump's actions, ''[b]oth have now been opened to question.'' [255]

Ratifying President Trump's behavior would likewise erode longstanding U.S. anti-corruption policy, which encourages countries to refrain from using the criminal justice system to investigate political opponents. As many witnesses explained, urging Ukraine to engage in ''selective politically associated investigations or prosecutions'' undermines the power of America's example and our longstanding efforts to promote the rule of law abroad.[256]

An acquittal would also provide license to President Trump and his successors to use taxpayer dollars for personal political ends. Foreign aid is not the only vulnerable source of funding; Presidents could also hold hostage federal funds earmarked for States—such as money for natural disasters, highways, and healthcare—unless and until State officials perform personal political favors. Any Congressional appropriation would be an opportunity for a President to solicit a favor for his personal political purposes—or for others to seek to curry favor with him. Such an outcome would be entirely incompatible with our constitutional system of self-government.

President Trump has betrayed the American people and the ideals on which the Nation was founded. Unless he is removed from office, he will continue to endanger our national security, jeopardize the integrity of our elections, and undermine our core constitutional principles.

Respectfully submitted,

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ENDNOTES

1. H. Res. 755, 116th Cong. (2019).
2. *See* Statement of Material Facts (Statement of Facts) (Jan. 18, 2020), ¶¶1–151 (filed as an attachment to this Trial Memorandum).
3. *Id*. ¶¶75–76.
4. *Id*. ¶¶76–77.
5. *Id*. ¶¶11–12.
6. *Id*. ¶¶11, 76.
7. *Id*. ¶12.
8. *Id*. ¶13.
9. *Id*. ¶14.
10. *See, e.g., id*. ¶53.
11. *See, e.g., id*. ¶¶16, 18.
12. *Id*. ¶59.
13. *Id*. ¶¶120–21.
14. *Id*. ¶122.
15. *Id*. ¶88.
16. *See, e.g., id*. ¶24.
17. *See, e.g., id*. ¶¶19, 25, 145–47.
18. *Id*. ¶¶28–48.
19. *Id*. ¶¶30–31.
20. *Id*. ¶46.
21. *Id*. ¶¶43, 46–48.
22. *See, e.g., id*. ¶¶127, 131.
23. *See id*. ¶¶49–69.
24. *Id*. ¶50.
25. *Id*. ¶¶3–4, 50.
26. *See id*. ¶137.
27. Letter from John Adams to Thomas Jefferson (Dec. 6, 1787) (Adams-Jefferson Letter), https://perma.cc/QWD8-222B.
28. *See Impeachment of Donald J. Trump, President of the United States: Report of the Comm. on the Judiciary of the H. of Representatives, together with Dissenting Views, to Accompany H. Res. 755*, H. Rep. No. 116–346 (2019); *Report of the H. Permanent Select Comm. on Intelligence on the Trump-Ukraine Impeachment Inquiry, together with Minority Views*, H. Rep. No. 116–335 (2019); *see also* Majority Staff of the H. Comm. on the Judiciary, 116th Cong., *Constitutional Grounds for Presidential Impeachment* (Comm. Print 2019).
29. H. Res. 755, at 2–5.
30. U.S. Const., Art. I, §2, cl. 5.
31. *See* Statement of Facts ¶¶164–69.
32. *Id*. ¶¶179–83.
33. *See, e.g., id*. ¶¶186–87.
34. *See id*. ¶¶191–93.
35. *Id*. ¶¶187–90.
36. *See id*. ¶178; H. Res. 755, at 5–8.
37. U.S. Const., Art. II, §4.
38. U.S. Const., Art. I, §2, cl. 5.
39. U.S. Const., Art. I, §3, cl. 6.
40. U.S. Const., Art. II, §4.
41. U.S. Const., Art. I, §3, cl. 6.
42. U.S. Const., Art. II, §1, cl. 8.
43. 2 *The Records of the Federal Convention of 1787*, at 392 (Max Farrand ed., 1911) (Farrand).
44. *Background and History of Impeachment: Hearing Before the Subcomm. on the Constitution of the H. Comm. on the Judiciary*, 105th Cong. 49 (1998) (quoting James Iredell).
45. 2 Farrand at 67.
46. *See id*. at 65.
47. *Id*. at 64.
48. *Id*. at 65.
49. *Id*. at 64.
50. *See The Federalist No. 65* (Alexander Hamilton).
51. *See, e.g.*, 2 Farrand at 65–66; George Washington, Farewell Address (Sept. 19, 1796), *George Washington Papers, Series 2, Letterbooks 1754–1799: Letterbook 24, April 3, 1793–March 3, 1797*, Library of Congress (Washington Farewell Address); Adams-Jefferson Letter, https://perma.cc/QWD8-222B.
52. Washington Farewell Address.
53. *The Federalist No. 68* (Alexander Hamilton).
54. 2 Farrand at 66.
55. Adams-Jefferson Letter, https://perma.cc/QWD8-222B.
56. U.S. Const., Art. II, §1, cl. 5.
57. U.S. Const., Art. I, §9, cl. 8.
58. U.S. Const., Art. II, §1, cl. 7.
59. U.S. Const., Art. II, §1, cl. 1.
60. U.S. Const., Art. II, §4; *see* 2 Farrand at 550.
61. 2 Farrand at 550.
62. *The Federalist No. 65* (Alexander Hamilton) (capitalization altered).
63. These issues are discussed at length in the report by the House Committee on the Judiciary. *See* H. Rep. No. 116–346, at 28–75.
64. Statement of Facts ¶160.
65. *Id*. ¶161.
66. *See id*. ¶¶166, 180, 183, 189–90.
67. *Id*. ¶162.
68. *Id*. ¶164.
69. *Id*. ¶¶164–69.
70. *Id*. ¶183.
71. *Id*. ¶187.
72. *Id*. ¶¶188–89.
73. *Id*. ¶189.
74. *Id*. ¶176; *see also* H. Rep. No. 116–335.
75. Statement of Facts ¶176; *see also* H. Res. 755.
76. Statement of Facts ¶178; H. Res. 755.
77. H. Res. 755, at 2–3.
78. *Id*.
79. *Id*. at 3.
80. *Id*.
81. *Id*. at 4.
82. *Id*. at 5.
83. *Id*. at 6.
84. *Id*.
85. *Id*. at 8.

86. *Id.* at 7.
87. *Id.* at 5, 8.
88. *See* Statement of Facts ¶¶ 1–157.
89. *See id.* ¶¶ 1–157.
90. *See, e.g.*, *Report of the Impeachment Trial Comm. on the Articles Against Judge G. Thomas Porteous, Jr.*, S. Rep. No. 111–347, at 6–7 (2010); *Impeachment of Judge Alcee L. Hastings: Report of the H. Comm. of the Judiciary to Accompany H. Res. 499*, H. Rep. No. 100–810, at 1–5, 8, 41 (1988); 132 Cong. Rec. H4710–22 (daily ed. July 22, 1986) (impeachment of Judge Claiborne).
91. For a more detailed discussion of abuse of power as an impeachable offense, see H. Rep. No. 116–346, at 43–48, 68–70, 78–81.
92. Statement of Facts ¶¶ 1–151.
93. *Id.* ¶¶ 11–12.
94. *See id.* ¶ 12.
95. *Id.*
96. *Id.* ¶¶ 11, 17.
97. *Id.* ¶ 12.
98. *Id.*
99. *Id.*
100. *Id.*; *see also id.* ¶¶ 83–84, 150.
101. *Id.* ¶¶ 11, 84.
102. *Id.* ¶¶ 12–14.
103. *Id.* ¶ 14.
104. *Id.* ¶ 13.
105. *Id.*
106. *See id.* ¶¶ 11–13, 83–84.
107. *Id.* ¶ 6.
108. *Id.* ¶¶ 7–9.
109. *Id.* ¶ 10 (quoting Mr. Giuliani).
110. *Id.* ¶¶ 28–48.
111. *Id.* ¶ 35.
112. *See id.* ¶¶ 30–31, 34–35.
113. *Id.* ¶ 39.
114. *Id.* ¶¶ 39, 41–42.
115. *Id.* ¶ 46. The GAO opinion addresses only the portion of the funds appropriated to the Department of Defense. The opinion explains that OMB and the State Department have not provided the information GAO needs to evaluate the legality of the hold placed by the President on the remaining funds.
116. *Id.* ¶ 76.
117. *Id.* ¶¶ 76, 80.
118. *Id.* ¶ 82.
119. *Id.* ¶ 77.
120. *Id.* ¶ 101.
121. *Id.* ¶ 110.
122. *Id.* ¶ 114.
123. *Id.* ¶¶ 103, 130–31.
124. *Id.* ¶ 3.
125. *See, e.g.*, *id.* ¶ 4.
126. *Id.* ¶ 88.
127. *Id.* ¶ 52.
128. *Id.* ¶ 137.
129. *Id.* ¶¶ 141–42, 150.
130. *See generally* Statement of Facts; H. Rep. No. 116–346; H. Rep. No. 116–335.
131. Statement of Facts ¶¶ 11–15.
132. *Id.* ¶¶ 16–19.
133. *See id.* ¶¶ 154–56 (then-candidate Trump's actions relating to the FBI's investigation into Hillary Clinton).
134. *Id.* ¶ 88.
135. *Id.* ¶ 121. Mr. Mulvaney, along with his deputy Robert Blair and OMB official Michael Duffey—who were subpoenaed by the House, but refused to testify at the President's direction, see *id.* 187—would provide additional firsthand testimony regarding the President's withholding of official acts in exchange for Ukraine's assistance with his re-election.
136. *Id.* ¶ 18.
137. *Id.*
138. *Id.* ¶ 19 (emphasis added).
139. *Id.* ¶ 24.
140. *Id.* 78.
141. *Id.* ¶¶ 11–15. 122.
142. *Id.*
143. *Id.* ¶ 42.
144. *Id.* ¶¶ 43–48.
145. *Id.* ¶¶ 45–46.
146. *Id.* ¶ 140.
147. *Id.* ¶ 59. Although Bolton has not cooperated with the House's inquiry, he has offered to testify to the Senate if subpoenaed.
148. *Id.* ¶ 58.
149. *Id.* ¶ 84.
150. *Id.* ¶ 83.
151. *Id.* ¶ 118.
152. *Id.* ¶ 55 (recalling his statement to Ambassador Volker in July 2019).
153. *Id.* ¶ 68.
154. *Id.* ¶ 104.
155. *Id.* ¶ 150.
156. *Id.* ¶ 151.
157. *Id.* ¶ 143.
158. *See id.* ¶¶ 2, 33.
159. *See id.* ¶ 88.
160. *See id.* ¶¶ 1–2.
161. *See id.* ¶¶ 22–24.
162. *See id.* ¶¶ 36 n.73, 39.
163. *See id.* ¶ 7.
164. *See id.* ¶¶ 8–9, 81.
165. *See id.* ¶ 82 n.138.
166. *See e.g.*, *id.* ¶¶ 82, 131.
167. *See id.* ¶¶ 41–48.
168. *See id.* ¶¶ 43–45.
169. *See id.* ¶ 44.
170. *See id.*
171. *See id.* ¶ 131.
172. *Id.* ¶ 28.
173. *Id.* ¶ 31.
174. *Id.*
175. *Id.*
176. *Id.* ¶ 4.
177. *Id.* ¶¶ 132–33.
178. *Id.* ¶ 4 & n.8.
179. *See id.* ¶ 50.
180. *See id.*
181. Transcript, *Impeachment Inquiry: Fiona Hill and David Holmes: Hearing Before the H. Permanent Select Comm. on Intelligence*, 116th Cong. 175 (Nov. 21, 2019).
182. Transcript, *Impeachment Inquiry: Ambassador Marie ''Masha'' Yovanovitch: Hearing Before the H. Permanent Select Comm. on Intelligence*, 116th Cong. 19 (Nov. 15, 2019) (Yovanovitch Hearing Tr.).
183. Transcript, *Impeachment Inquiry: Ambassador William B. Taylor and George Kent: Hearing Before the H. Permanent Select Comm. on Intelligence*, 116th Cong. 165 (Nov. 13, 2019).
184. 4 Annals of Cong. 601 (1796) (statement of Rep. William Lyman) (noting that Congress has ''the right to inspect every paper and transaction in any department'' during an impeachment inquiry).
185. *See, e.g.*, *The Federalist No. 65* (Alexander Hamilton) (referring to the House as the ''inquisitors for the nation'' for purposes of impeachment); *Kilbourn* v. *Thompson*, 103 U.S. 168, 193 (1880); 4 James D. Richardson ed., Messages and Papers of Presidents 434–35 (1896); see also H. Rep. No. 116–346, at 139–42 (collecting examples of past Presidents beginning with George Washington acknowledging the importance of Congress's right to information from the Executive Branch in impeachment inquiries).
186. *See generally* H. Rep. No. 116–346, at 139–48.
187. *Quinn* v. *United States*, 349 U.S. 155, 160–61 (1955).
188. *Watkins* v. *United States*, 354 U.S. 178, 187–88 (1957).
189. *McGrain* v. *Daugherty*, 273 U.S. 135, 174 (1927).
190. *Id.* at 175.
191. *Watkins*, 354 U.S. at 187.
192. 2 Joseph Story, *Commentaries on the Constitution of the United States* § 1501 (2d ed. 1851).
193. *In re Report & Recommendation of June 5, 1972 Grand Jury Concerning Transmission of Evidence to House of Representatives*, 370 F. Supp. 1219, 1230 (D.D.C. 1974).
194. *Kilbourn*, 103 U.S. at 190. The Court in *Kilbourn* invalidated a contempt order by the House but explained that the ''whole aspect of the case would have changed'' if it had been an impeachment proceeding. *Id.* at 193.
195. 4 Annals of Cong. 601 (statement of Rep. William Lyman).
196. Cong. Globe, 29th Cong., 1st Sess. 698 (1846) (statement of President James K. Polk); *see also* H. Rep. No. 116–346, at 139–42.
197. Remarks by President Nixon (Apr. 17, 1973), *reprinted in Statement of Information: Hearings Before the Comm. on the Judiciary, H. of Representatives: Book IV—Part 2, Events Following the Watergate Break-in* (1974).
198. H. Rep. No. 116–346, at 142; *see Impeachment of Richard M. Nixon, President of the United States: Report of the Comm. on the Judiciary, H. of Representatives*, H. Rep. No. 93–1305, at 196 (1974).
199. *See* H. Rep. No. 93–1305, at 10.
200. *Id.* at 4.
201. *Id.* at 194.
202. *See* Statement of Facts ¶177.
203. *See id.* ¶169.
204. H. Res. 755, at 7; *see* Statement of Facts ¶169.
205. Statement of Facts ¶¶179–83.
206. *Id.* ¶¶186–87.
207. *Id.* ¶186.
208. *Id.* ¶190 & nn.309–10.
209. H. Res. 755, at 8.
210. *The Federalist No. 69* (Alexander Hamilton).
211. *See* Statement of Facts ¶184 & nn.296–97.
212. *Id.* ¶45. As noted above, the testimony of Messrs. Mulvaney, Blair, and Duffey would shed additional light on the White House's efforts to create an after-the-fact justification for the President's withholding of security assistance. Ambassador Bolton's testimony would likewise be illuminating in this regard given public reporting of his repeated, yet unsuccessful, efforts to convince the President to lift the hold.
213. *See id.* ¶172.
214. *Id.*
215. *Id.*
216. *Id.*
217. *See, e.g.*, *Landry* v. *Fed. Deposit Ins. Corp.*, 204 F.3d 1125, 1135 (D.C. Cir. 2000).
218. *See, e.g.*, *In re Sealed Case*, 121 F.3d 729, 738 (D.C. Cir. 1997); Statement of Facts ¶173 & n.280.
219. *See* H. Res. 755, at 7.
220. 2 Farrand at 67.
221. *The Federalist No. 66* (Alexander Hamilton).
222. U.S. Const., Art. I, §2, cl. 5.
223. U.S. Const., Art. I, §5, cl. 2.
224. *See, e.g.*, Statement of Facts ¶163; *see also* U.S. Const., Art. I, §2, cl. 5.
225. Statement of Facts ¶163; 165 Cong. Rec. E1357 (2019) (Impeachment Inquiry Procedures in the Committee on the Judiciary Pursuant to H. Res. 660); *Investigatory Powers of the Comm. on the Judiciary with Respect to its Impeachment Inquiry*, H. Rep. No. 105–795 (1998); H. Rep. No. 93–1305, at 8.
226. U.S. Const., Art. I, §3, cl. 6.
227. *Impeachment Inquiry: Hearings Before the H. Comm. on the Judiciary, Book I*, 93d Cong. 497 (1974) (statement of Chairman Peter W. Rodino, Jr.).
228. *See* Statement of Facts ¶192; Def.'s Mot. to Dismiss, or in the Alternative, for Summ. J. at 20, *Kupperman* v. *U.S. House of Representatives*, No. 19–3224 (D.D.C. Nov. 14, 2019), ECF No. 40; Defs.' and Def.-Intervenors' Mot. to Dismiss at 46–47, *Comm. on Ways & Means* v. *U.S. Dep't of the Treasury*, No. 19–1974 (D.D.C. Sept. 6, 2019), ECF No. 44; *see also* Brief for Def.-Appellant at 2, 3233, *Comm. on the Judiciary* v. *McGahn*, No. 19–5331 (D.C. Cir. Dec. 9, 2019).
229. *See also* Statement of Facts ¶164 (''I have an Article II, where I have the right to do whatever I want as president.'').
230. *See id.* ¶192 & n.316.
231. H. Res. 755, at 5.
232. Statement of Facts ¶¶191–93.
233. *Id.* ¶13.

234. *Id*. ¶¶152–56.
235. *Id*. ¶152.
236. *Id* ¶156.
237. *Id*.
238. *Id*. ¶¶76, 157.
239. *Id*. ¶77 n.132.
240. H. Rep. No. 116–335, at XI.
241. Statement of Facts ¶142.
242. *Id*.
243. *See id*. ¶¶144–49.
244. *Id*.
245. *Id*. ¶146.
246. *Id*. ¶149.
247. *Id*. ¶¶19, 69, 89.
248. *See, e.g., id*. ¶¶169–71; U.S. Const., Art. I, §2, cl. 5; U.S. Const., Art. I, §3, cl. 6.
249. Statement of Facts ¶177.
250. *Id*. ¶169.
251. *Id*. ¶177.
252. H. Res. 755, at 7–8.
253. *See* Statement of Facts ¶193.
254. *Id*. ¶192 & n.316.
255. Yovanovitch Hearing Tr. at 19.
256. Statement of Facts ¶122.

[In the Senate of the United States Sitting as a Court of Impeachment]

In re Impeachment of President Donald J. Trump

STATEMENT OF MATERIAL FACTS—ATTACHMENT TO THE TRIAL MEMORANDUM OF THE UNITED STATES HOUSE OF REPRESENTATIVES IN THE IMPEACHMENT TRIAL OF PRESIDENT DONALD J. TRUMP

INTRODUCTION

The U.S. House of Representatives has adopted Articles of Impeachment charging President Donald J. Trump with abuse of office and obstruction of Congress. The House's Trial Memorandum explains why the Senate should convict and remove President Trump from office, and permanently bar him from government service. The Memorandum relies on this Statement of Material Facts, which summarizes key evidence relating to the President's misconduct.

As further described below, and as detailed in House Committee reports,[1] President Trump used the powers of his office and U.S. taxpayers' money to pressure a foreign country, Ukraine, to interfere in the 2020 U.S. Presidential election on his behalf. President Trump's goals—which became known to multiple U.S. officials who testified before the House—were simple and starkly political: he wanted Ukraine's new President to announce investigations that would assist his 2020 reelection campaign and tarnish a political opponent, former Vice President Joseph Biden, Jr. As leverage, President Trump illegally withheld from Ukraine nearly $400 million in vital military and other security assistance that had been appropriated by Congress, and an official White House meeting that President Trump had promised Volodymyr Zelensky, the newly elected President of Ukraine. President Trump did this despite U.S. national security officials' unanimous opposition to withholding the aid from Ukraine, placing his own personal and political interests above the national security interests of the United States and undermining the integrity of our democracy.

When this scheme became known and Committees of the House launched an investigation, the President, for the first time in American history, ordered the categorical obstruction of an impeachment inquiry. President Trump directed that no witnesses should testify and no documents should be produced to the House, a co-equal branch of government endowed by the Constitution with the ''sole Power of Impeachment.''[2] President Trump's conduct—both in soliciting a foreign country's interference in a U.S. election and then obstructing the ensuing investigation into that interference—was consistent with his prior conduct during and after the 2016 election.

STATEMENT OF MATERIAL FACTS

I. President Trump's Abuse of Power

A. The President's Scheme To Solicit Foreign Interference in the 2020 Election From the New Ukrainian Government Began in Spring 2019

1. On April 21, 2019, Volodymyr Zelensky, a political neophyte, won a landslide victory in Ukraine's Presidential election.[3] Zelensky campaigned on an anti-corruption platform, and his victory reaffirmed the Ukrainian people's strong desire for reform.[4]

2. When President Trump called to congratulate Zelensky later that day, President Trump did not raise any concerns about corruption in Ukraine, although his staff had prepared written materials for him recommending that he do so, and the White House call readout incorrectly indicated he did.[5]

3. During the call, President Trump promised President-elect Zelensky that a high-level U.S. delegation would attend his inauguration and told him, ''When you're settled in and ready, I'd like to invite you to the White House.''[6]

4. Both events would have demonstrated strong support by the United States as Ukraine fought a war—and negotiated for peace—with Russia. ''Russia was watching closely to gauge the level of American support for the Ukrainian Government.''[7] A White House visit also would have bolstered Zelensky's standing at home as he pursued his anti-corruption agenda.[8]

5. Following the April 21 call, President Trump asked Vice President Mike Pence to lead the American delegation to President Zelensky's inauguration. During his own call with President-elect Zelensky on April 23, Vice President Pence confirmed that he would attend the inauguration ''if the dates worked out.''[9]

6. On April 23, the media reported that former Vice President Biden was going to enter the 2020 race for the Democratic nomination for President of the United States.[10]

7. The next day, April 24, the State Department executed President Trump's order to recall the U.S. ambassador to Ukraine, Marie ''Masha'' Yovanovitch, who was a well-regarded career diplomat and champion for anti-corruption reforms in Ukraine.[11]

8. The removal of Ambassador Yovanovitch was the culmination of a months-long smear campaign waged by the President's personal lawyer, Rudy Giuliani, and other allies of the President.[12] The President also helped amplify the smear campaign.[13]

9. Upon her return to the United States, Ambassador Yovanovitch was informed by State Department officials that there was no substantive reason or cause for her removal, but that President Trump had simply ''lost confidence'' in her.[14]

10. Mr. Giuliani later disclosed the true motive for Ambassador Yovanovitch's removal: Mr. Giuliani ''believed that [he] needed Yovanovitch out of the way'' because ''[s]he was going to make the investigations difficult for everybody.''[15]

11. Mr. Giuliani was referring to the two politically motivated investigations that President Trump solicited from Ukraine in order to assist his 2020 reelection campaign: one into former Vice President Biden and a Ukrainian gas company, Burisma Holdings, on whose board Biden's son sat;[16] the other into a discredited conspiracy theory that Ukraine, not Russia, had interfered in the 2016 U.S. election to help Hillary Clinton's campaign. One element of the latter conspiracy theory was that CrowdStrike—a NASDAQ-listed cybersecurity firm based in Sunnyvale, California, that the President erroneously believed was owned by a Ukrainian oligarch—had colluded with the Democratic National Committee (DNC) to frame Russia and help the election campaign of Hillary Clinton.[17]

12. There was no factual basis for either investigation. As to the first, witnesses unanimously testified that there was no credible evidence to support the allegations that, in late 2015, Vice President Biden corruptly encouraged Ukraine to remove then-Prosecutor General Viktor Shokin because he was investigating Burisma.[18] Rather, Vice President Biden was carrying out official U.S. policy—with bipartisan support[19]—and promoting anti-corruption reforms in Ukraine because Shokin was viewed by the United States, its European partners, and the International Monetary Fund to be ineffectual at prosecuting corruption and was himself corrupt.[20] In fact, witnesses unanimously testified that the removal of Shokin made it *more likely* that Ukraine would investigate corruption, including Burisma and its owner, not less likely.[21] The Ukrainian Parliament removed Shokin in March 2016.[22]

13. As to the second investigation, the U.S. Intelligence Community determined that Russia—not Ukraine—interfered in the 2016 election.[23] The Senate Select Committee on Intelligence reached the same conclusion following its own lengthy bipartisan investigation.[24] Special Counsel Robert Mueller, III, likewise concluded that the ''Russian government interfered in the 2016 presidential election in sweeping and systematic fashion.''[25] And FBI Director Christopher Wray, a Trump appointee, recently confirmed that law enforcement ''ha[s] no information that indicates that Ukraine interfered with the 2016 presidential election.''[26]

14. As Dr. Fiona Hill—who served until July 2019 as the Senior Director of European and Russian Affairs at the National Security Council (NSC) under President Trump until July 2019—testified, the theory of Ukrainian interference in the 2016 election is a ''fictional narrative that is being perpetrated and propagated by the Russian security services themselves'' to deflect from Russia's own culpability and to drive a wedge between the United States and Ukraine.[27] In fact, shortly after the 2016 U.S. election, this conspiracy theory was promoted by none other than President Vladimir Putin himself.[28] On May 3, 2019, shortly after President Zelensky's election, President Trump and President Putin spoke by telephone, including about the so-called ''Russian Hoax.''[29]

15. President Trump's senior advisors had attempted to dissuade the President from promoting this conspiracy theory, to no avail. Dr. Hill testified that President Trump's former Homeland Security Advisor Tom Bossert and former National Security Advisor H.R. McMaster ''spent a lot of time trying to refute this [theory] in the first year of the administration.''[30] Bossert later said the false narrative about Ukrainian interference in the 2016 election was ''not only a conspiracy theory, it is completely debunked.''[31]

B. The President Enlisted His Personal Attorney and U.S. Officials To Help Execute the Scheme for His Personal Benefit

16. Shortly after his April 21 call with President Zelensky, President Trump began to publicly press for the two investigations he wanted Ukraine to pursue. On April 25—the day that former Vice President Biden announced his candidacy for the Democratic nomination for President—President Trump called into Sean Hannity's prime time *Fox News* show. Referencing alleged Ukrainian interference in the 2016 election, President Trump said, ''It sounds like big stuff,'' and suggested that the Attorney General might investigate.[32]

17. On May 6, in a separate *Fox News* interview, President Trump claimed Vice President Biden's advocacy for Mr. Shokin's dismissal in 2016 was ''a very serious problem'' and ''a major scandal, major problem.'' [33]

18. On May 9, the *New York Times* reported that Mr. Giuliani was planning to travel to Ukraine to urge President Zelensky to pursue the investigations.[34] Mr. Giuliani acknowledged that ''[s]omebody could say it's improper'' to pressure Ukraine to open investigations that would benefit President Trump, but he argued:

[T]his isn't foreign policy—I'm asking them to do an investigation that they're doing already, and that other people are telling them to stop. And I'm going to give them reasons why they shouldn't stop it because that information will be very, very helpful to my client, and may turn out to be helpful to my government.[35]

Ukraine was not, in fact, ''already'' conducting these investigations. As described below, the Trump Administration repeatedly tried but failed to get Ukrainian officials to instigate these investigations. According to Mr. Giuliani, the President supported his actions, stating that President Trump ''basically knows what I'm doing, sure, as his lawyer.'' [36]

19. IN a letter dated May 10, 2019, and addressed to President-elect Zelensky, Mr. Giuliani wrote that he ''represent[ed] him [President Trump] as a private citizen, not as President of the United States.'' In his capacity as ''personal counsel to President Trump, and with his knowledge and consent,'' Mr. Giuliani requested a meeting with President Zelensky the following week to discuss a ''specific request.'' [37]

20. On the evening of Friday, May 10, however, Mr. Giuliani announced that he was canceling his trip.[38] He later explained, ''I'm not going to go'' to Ukraine ''because I'm walking into a group of people that are enemies of the President.'' [39]

21. By the following Monday morning, May 13, President Trump had ordered Vice President Pence not to attend President Zelensky's inauguration in favor of a lower-ranking delegation led by Secretary of Energy Rick Perry.[40]

22. The U.S. delegation—which also included Ambassador to the European Union Gordon Sondland, Special Representative for Ukraine Negotiations Ambassador Kurt Volker, and NSC Director for Ukraine Lieutenant Colonel Alexander Vindman—returned from the inauguration convinced that President Zelensky was genuinely committed to anti-corruption reforms.[41]

23. At a meeting in the Oval Office on May 23, members of the delegation relayed their positive impressions to President Trump and encouraged him to schedule the promised Oval Office meeting for President Zelensky. President Trump, however, said he ''didn't believe'' the delegation's positive assessment, claiming ''that's not what I hear'' from Mr. Giuliani.[42] The President cast his dim view of Ukraine in personal terms, stating that Ukraine ''tried to take me down'' during the 2016 election—an apparent reference to the debunked conspiracy theory that Ukraine interfered in the 2016 election to help Hillary Clinton and harm his campaign.[43]

24. Rather than commit to a date for an Oval Office meeting with President Zelensky, President Trump directed the delegation to ''[t]alk to Rudy, talk to Rudy.'' [44] Ambassador Sondland testified that ''if [the delegation] never called Rudy and just left it alone nothing would happen with Ukraine,'' and ''if [the President] was going to have his mind changed, that was the path.'' [45] Following the May 23 meeting, Secretary Perry and Ambassadors Sondland and Volker began to coordinate and work with Mr. Giuliani to satisfy the President's demands.[46]

25. Mr. Giuliani is not a U.S. government official and has never served in the Trump Administration. Rather, as he has repeatedly made clear, his goal was to obtain ''information [that] will be very, very helpful to my client''—President Trump.[47] Mr. Giuliani made clear to Ambassadors Sondland and Volker, who were in direct communications with Ukrainian officials, that a White House meeting would not occur until Ukraine announced its pursuit of the two political investigations.[48]

26. On June 17, Ambassador Bill Taylor, whom Secretary of State Mike Pompeo had asked to replace Ambassador Yovanovitch, arrived in Kyiv as the new Chargé d'Affaires.[49]

27. Ambassador Taylor quickly observed that there was an ''irregular channel'' led by Mr. Giuliani that, over time, began to undermine the official channel of U.S. diplomatic relations with Ukraine.[50] Ambassador Sondland similarly testified that the agenda described by Mr. Giuliani became more ''insidious'' over time.[51] Mr. Giuliani would prove to be, as the President's National Security Advisor Ambassador John Bolton told a colleague, a ''hand grenade that was going to blow everyone up.'' [52]

C. The President Froze Vital Military and Other Security Assistance for Ukraine

28. Since 2014, Ukraine has been engaged in an ongoing armed conflict with Russia in the Donbas region of eastern Ukraine.[53] Ukraine is a ''strategic partner of the United States,'' and the United States has long supported Ukraine in its conflict with Russia.[54] As Ambassador Volker and multiple other witnesses testified, supporting Ukraine is ''critically important'' to U.S. interests, including countering Russian aggression in the region.[55]

29. Ukrainians face casualties on a near-daily basis in their ongoing conflict with Russia.[56] Since 2014, Russian aggression has resulted in more than 13,000 Ukrainian deaths on Ukrainian territory,[57] including approximately 3,331 civilians, and has wounded another 30,000 persons.[58]

30. Since 2014, following Russia's invasion of Ukraine and its annexation of the Crimean Peninsula, Congress has allocated military and other security assistance funds to Ukraine on a broad bipartisan basis.[59] Since 2014, the United States has provided approximately $3.1 billion in foreign assistance to Ukraine: $1.5 billion in military and other security assistance, and $1.6 billion in non-military, non-humanitarian aid to Ukraine.[60]

31. The military assistance provided by the United States to Ukraine ''saves lives'' by making Ukrainian resistance to Russia more effective.[61] It likewise advances U.S. national security interests because, ''[i]f Russia prevails and Ukraine falls to Russian dominion, we can expect to see other attempts by Russia to expand its territory and influence.'' [62] Indeed, the reason the United States provides assistance to the Ukrainian military is ''so that they can fight Russia over there, and we don't have to fight Russia here.'' [63]

32. The United States' European allies have similarly provided political and economic support to Ukraine. Since 2014, the European Union (EU) has been the largest donor to Ukraine.[64] The EU has extended more macro-financial assistance to Ukraine—approximately €3.3 billion—than to any other non-EU country and has committed to extend another €1.1 billion.[65] Between 2014 and September 30, 2019, the EU and the European financial institutions (including the European Investment Bank, European Bank for Reconstruction and Development, and others) committed over 15 billion in grants and loans to support the reform process in Ukraine.[66] According to EU data, Germany contributed €786.5 million to Ukraine between 2014 and 2017; the United Kingdom contributed €105.6 million; and France contributed €61.9 million over that same period (not including the amounts these countries contribute through the EU).[67]

33. In 2017 and 2018, the United States provided approximately $511 million and $359 million, respectively, in foreign assistance to Ukraine, including military and other security assistance.[68] During those two years, President Trump and his Administration allowed the funds to flow to Ukraine unimpeded.[69]

34. For fiscal year 2019, Congress appropriated and authorized $391 million in taxpayer-funded security assistance to Ukraine: $250 million in funds administered by the Department of Defense (DOD) and $115 million in funds administered by the State Department, with another $26 million carried over from fiscal year 2018.[70]

35. DOD planned to use the funds to provide Ukraine with sniper rifles, rocket-propelled grenade launchers, counter-artillery radars, electronic warfare detection and secure communications, and night vision equipment, among other military equipment, to defend itself against Russian forces, which have occupied part of eastern Ukraine since 2014.[71] These purposes were consistent with the goals of Congress, which had appropriated the funds administered by DOD under the Ukraine Security Assistance Initiative (USAI) for the purpose of providing ''training; equipment; lethal assistance; logistics support, supplies and services; sustainment; and intelligence support to the military and national security forces of Ukraine, and . . . replacement of any weapons or articles provided to the Government of Ukraine.'' [72]

36. On June 18, 2019, after all Congressionally mandated conditions on the DOD-administered aid—including certification that Ukraine had adopted sufficient anti-corruption reforms—were met, DOD issued a press release announcing its intention to provide the $250 million in security assistance to Ukraine.[73]

37. On June 19, the Office of Management and Budget 1(OMB) received questions from President Trump about the funding for Ukraine.[74] OMB, in turn, made inquiries with DOD.[75]

38. On June 27, Acting Chief of Staff Mick Mulvaney reportedly emailed his senior advisor Robert Blair, ''Did we ever find out about the money for Ukraine and whether we can hold it back?'' Mr. Blair responded that it would be possible, but they should ''[e]xpect Congress to become unhinged'' if the President held back the appropriated funds.[76]

39. Around this time, despite overwhelming support for the security assistance from every relevant Executive Branch agency,[77] and despite the fact that the funds had been authorized and appropriated by Congress with strong bipartisan support,[78] the President ordered a hold on all military and other security assistance for Ukraine.[79]

40. By July 3, OMB had blocked the release of $141 million in State Department funds. By July 12, all military and other security assistance for Ukraine had been blocked.[80]

41. On July 18, OMB announced to the relevant Executive Branch agencies during a secure videoconference that President Trump had ordered a hold on all Ukraine security assistance.[81] No explanation for the hold was provided.[82]

42. On July 25—approximately 90 minutes after President Trump spoke by phone with President Zelensky—OMB's Associate Director for National Security Programs, Michael

Duffey, a political appointee, instructed DOD officials: ''Based on guidance I have received and in light of the Administration's plan to review assistance to Ukraine, including the Ukraine Security Assistance Initiative, please hold off on any additional DoD obligations of these funds, pending direction from that process.'' [83] He added: ''Given the sensitive nature of the request, I appreciate your keeping that information closely held to those who need to know to execute the direction.'' [84]

43. In late July, the NSC convened a series of interagency meetings during which senior Executive Branch officials discussed the hold on security assistance.[85] Over the course of these meetings, a number of facts became clear: (1) the President personally directed the hold through OMB;[86] (2) no credible justification was provided for the hold;[87] (3) with the exception of OMB, all relevant agencies supported the Ukraine security assistance because, among other things, it was in the national security interests of the United States;[88] and (4) there were serious concerns about the legality of the hold.[89]

44. Although President Trump later claimed that the hold was part of an effort to get European allies to share more of the costs for security assistance for Ukraine, officials responsible for the security assistance testified they had not heard that rationale discussed in June, July, or August. For example, Mark Sandy, OMB's Deputy Associate Director for National Security Programs, who is responsible for DOD's portion of the Ukraine security assistance, testified that the European burden-sharing explanation was first provided to him in September—following his repeated requests to learn the reason for the hold.[90] Deputy Assistant Secretary of Defense Laura Cooper, whose responsibilities include the Ukraine security assistance, testified that she had ''no recollection of the issue of allied burden sharing coming up'' in the three meetings she attended about the freeze on security assistance, nor did she recall hearing about a lack of funding from Ukraine's allies as a reason for the freeze.[91] Ms. Cooper further testified that there was no policy or interagency review process relating to the Ukraine security assistance that she ''participated in or knew of'' in August 2019.[92] In addition, while the aid was being withheld, Ambassador Sondland, the U.S. Ambassador to the EU, was never asked to reach out to the EU or its member states to ask them to increase their contributions to Ukraine.[93]

45. Two OMB career officials, including one of its legal counsel, ultimately resigned, in part, over concerns about the handling of the hold on security assistance.[94] A confidential White House review has reportedly ''turned up hundreds of documents that reveal extensive efforts to generate an after-the-fact justification'' for the hold.[95]

46. Throughout August, officials from DOD warned officials from OMB that, as the hold continued, there was an increasing risk that the funds for Ukraine would not be timely obligated, in violation of the Impoundment Control Act of 1974.[96] On January 16, 2020, the U.S. Government Accountability Office (GAO) concluded that OMB had, in fact, violated the Impoundment Control Act when it withheld from obligation funds appropriated by Congress to DOD for security assistance to Ukraine. GAO stated that ''[f]aithful execution of the law does not permit the President to substitute his own policy priorities for those that Congress has enacted into law.'' [97]

47. In late August, Secretary of Defense Mike Esper, Secretary of State Pompeo, and National Security Advisor Bolton reportedly urged the President to release the aid to Ukraine, advising the President that the aid was in America's national security interest.[98] On August 30, however, an OMB official advised a Pentagon official by email that there was a ''clear direction from POTUS to continue to hold.'' [99]

48. Contrary to U.S. national security interests—and over the objections of his own advisors—President Trump continued to withhold the funding to Ukraine through August and into September, without any credible explanation.[100]

D. President Trump Conditioned a White House Meeting on Ukraine Announcing It Would Launch Politically Motivated Investigations

49. Upon his arrival in Kyiv in June 2019, Ambassador Taylor sought to schedule the promised White House meeting for President Zelensky, which was ''an agreed-upon goal'' of policymakers in Ukraine and the United States.[101]

50. As Ambassador Volker explained, a White House visit by President Zelensky would constitute ''a tremendous symbol of support'' for Ukraine and would ''enhance[] [President Zelensky's] stature.'' [102]

51. Ambassador Taylor learned, however, that President Trump ''wanted to hear from Zelensky,'' who had to ''make clear'' to President Trump that he was not ''standing in the way of investigations.'' '' [103] It soon became clear to Ambassador Taylor and others that the White House meeting would not be scheduled until the Ukraine committed to the investigations of ''Burisma and alleged Ukrainian influence in the 2016 elections.'' [104]

52. Ambassador Sondland was unequivocal in describing this conditionality. He testified:

I know that members of this committee frequently frame these complicated issues in the form of a simple question: Was there a quid pro quo? As I testified previously with regard to the requested White House call and the White House meeting, the answer is yes.[105]

53. According to Ambassador Sondland, the public *announcement* of the investigations—and not necessarily the pursuit of the investigations themselves—was the price President Trump sought in exchange for a White House meeting with Ukrainian President Zelensky.[106]

54. Both Ambassadors Volker and Sondland explicitly communicated this quid pro quo to Ukrainian government officials. For example, on July 2, in Toronto, Canada, Ambassador Volker conveyed the message directly to President Zelensky and referred to the ''Giuliani factor'' in President Zelensky's engagement with the United States.[107] Ambassador Volker told Ambassador Taylor that during the Toronto conference, he counseled President Zelensky about how he ''could prepare for the phone call with President Trump''—specifically, that President Trump ''would like to hear about the investigations.'' [108]

55. Ambassador Volker confirmed that, in ''a pull-aside'' meeting in Toronto, he ''advise[d] [President Zelensky] that he should call President Trump personally because he needed to . . . be able to convey to President Trump that he was serious about fighting corruption, investigating things that happened in the past and so forth.'' [109] Upon hearing about this discussion, Deputy Assistant Secretary of State for European and Eurasian Affairs George Kent told Ambassador Volker that ''asking for another country to investigate a prosecution for political reasons undermines our advocacy of the rule of law.'' [110]

56. On July 10, at a meeting with Ukrainian officials in Ambassador Bolton's office at the White House, Ambassador Sondland was even more explicit about the quid pro quo. He stated—in front of multiple witnesses, including two top advisors to President Zelensky and Ambassador Bolton—that he had an arrangement with Mr. Mulvaney to schedule the White House visit after Ukraine initiated the ''investigations.'' [111]

57. In a second meeting in the White House Ward Room shortly thereafter, ''Ambassador Sondland, in front of the Ukrainians . . . was talking about how he had an agreement with Chief of Staff Mulvaney for a meeting with the Ukrainians if they were going to go forward with investigations.'' [112] More specifically, Lt. Col. Vindman testified that Ambassador Sondland said ''[t]hat the Ukrainians would have to deliver an investigation into the Bidens.'' [113]

58. During that meeting, Dr. Hill and Lt. Col. Vindman objected to Ambassador Sondland intertwining what Dr. Hill later described as a ''domestic political errand'' with official national security policy toward Ukraine.[114]

59. Following the July 10 meetings, Dr. Hill discussed what had occurred with Ambassador Bolton, including Ambassador Sondland's reiteration of the quid pro quo to the Ukrainians in the Ward Room. Ambassador Bolton told her to ''go and tell [the NSC Legal Advisor] that I am not part of whatever drug deal Sondland and Mulvaney are cooking up on this.'' [115]

60. Both Dr. Hill and Lt. Col. Vindman separately reported Sondland's description of the quid pro quo during the July 10 meetings to NSC Legal Advisor, John Eisenberg, who said he would follow up.[116]

61. After the July 10 meetings, Andriy Yermak, a top aide to President Zelensky who was in the meetings, followed up with Ambassador Volker by text message: ''Thank you for meeting and your clear and very logical position . . . I feel that the key for many things is Rudi [*sic*] and I [am] ready to talk with him at any time.'' [117]

62. Over the next two weeks, Ambassadors Sondland and Volker coordinated with Mr. Giuliani and senior Ukrainian and American officials to arrange a telephone call between President Trump and President Zelensky. They also worked to ensure that, during that phone call, President Zelensky would convince President Trump of his willingness to undertake the investigations in order to get the White House meeting scheduled.[118]

63. On July 19, Ambassador Volker had breakfast with Mr. Giuliani at the Trump Hotel in Washington, D.C. After the meeting, Ambassador Volker reported back to Ambassadors Sondland and Taylor about his conversation with Mr. Giuliani, stating, ''Most impt is for Zelensky to say that he will help investigation—and address any specific personnel issues—if there are any.'' [119]

64. The same day, Ambassador Sondland spoke with President Zelensky and recommended that the Ukrainian leader tell President Trump that he ''will leave no stone unturned'' regarding the investigations during the upcoming Presidential phone call.[120]

65. Following his conversation with President Zelensky, Ambassador Sondland emailed top Trump Administration officials, including Secretary Pompeo, Mr. Mulvaney, and Secretary Perry. Ambassador Sondland stated that President Zelensky confirmed that he would ''assure'' President Trump that ''he intends to run a fully transparent investigation and will turn over every stone.'' '' [121]

66. Secretary Perry responded to Ambassador Sondland's email, ''Mick just confirmed the call being set up for tomorrow by NSC.'' About an hour later, Mr. Mulvaney replied, ''I asked NSC to set it up for tomorrow.'' [122]

67. According to Ambassador Sondland, this email—and other correspondence with

top Trump Administration officials—showed that his efforts regarding Ukraine were not part of a rogue foreign policy. To the contrary, Ambassador Sondland testified that ''everyone was in the loop.'' [123]

68. The Ukrainians also understood the quid pro quo—and the domestic U.S. political ramifications of the investigations they were being asked to pursue. On July 20, a close advisor to President Zelensky warned Ambassador Taylor that the Ukrainian leader ''did not want to be used as a pawn in a U.S. reelection campaign.'' [124] The next day, Ambassador Taylor warned Ambassador Sondland that President Zelensky was ''sensitive about Ukraine being taken seriously, not merely as an instrument in Washington domestic, reelection politics.'' [125]

69. Nevertheless, President Trump, directly and through his hand-picked representatives, continued to press the Ukrainian government for the announcement of the investigations, including during President Trump's July 25 call with President Zelensky.[126]

E. President Trump Directly Solicited Election Interference From President Zelensky

70. In the days leading up to President Trump's July 25 call with President Zelensky, U.S. polling data showed former Vice President Biden leading in a head-to-head contest against President Trump.[127]

71. Meanwhile, Ambassadors Sondland and Volker continued to prepare President Zelensky and his advisors for the call with President Trump until right before it occurred.

72. On the morning of July 25, Ambassador Sondland spoke with President Trump in advance of his call with President Zelensky. Ambassador Sondland then called Ambassador Volker and left a voicemail.[128]

73. After receiving Ambassador Sondland's message, Ambassador Volker sent a text message to President Zelensky's aide, Mr. Yermak, approximately 30 minutes before the call:

Heard from White House—assuming President Z convinces trump he will investigate/ ''get to the bottom of what happened'' in 2016, we will nail down date for visit to Washington. Good luck! [129]

74. In his public testimony, Ambassador Sondland confirmed that Ambassador Volker's text message to Mr. Yermak accurately summarized the directive he had received from President Trump earlier that morning.[130]

75. During the roughly 30–minute July 25 call, President Zelensky thanked President Trump for the ''great support in the area of defense'' provided by the United States and stated that Ukraine would soon be prepared to purchase additional Javelin anti-tank missiles from the United States.[131]

76. President Trump immediately responded with his own request: ''I would like you to do us a favor though,'' which was ''to find out what happened'' with alleged Ukrainian interference in the 2016 election and to ''look into'' former Vice President Biden's role in encouraging the removal of the former Ukrainian prosecutor general.

77. Referencing Special Counsel Mueller's investigation into Russian interference in the 2016 election, President Trump told President Zelensky, ''[T]hey say a lot of it started with Ukraine,'' and ''[w]hatever you can do, it's very important that you do it if that's possible.'' [132]

78. President Trump repeatedly pressed the Ukrainian President to consult with his personal lawyer, Mr. Giuliani, as well as Attorney General William Barr, about the two specific investigations.[133] President Trump stated, ''Rudy very much knows what's happening and he is a very capable guy. If you could speak to him that would be great.'' [134]

79. President Zelensky agreed, referencing Mr. Giuliani's back-channel role, noting that Mr. Yermak ''spoke with Mr. Giuliani just recently and we are hoping very much that Mr. Giuliani will be able to travel to Ukraine and we will meet once he comes to Ukraine.'' [135]

80. Later in the call, President Zelensky heeded the directives he had received from Ambassadors Sondland and Volker: he thanked President Trump for his invitation to the White House and then reiterated that, ''[o]n the other hand,'' he would ''ensure'' that Ukraine pursued ''the investigation'' that President Trump had requested. President Zelensky confirmed the investigations should be done ''openly.'' [136]

81. During the call, President Trump also attacked Ambassador Yovanovitch. He said, ''The former ambassador from the United States, the woman, was bad news and the people she was dealing with in the Ukraine were bad news so I just want to let you know that.'' He later added, ''Well, she's going to go through some things.'' President Trump also defended then-Ukrainian Prosecutor General Yuriy Lutsenko, who was widely known to be corrupt.[137]

82. The President did not mention any other issues relating to Ukraine, including concerns about Ukrainian corruption, President Zelensky's anti-corruption reforms, or the ongoing war with Russia. The President only identified two people in reference to investigations: Vice President Biden and his son.[138]

83. Listening to the call as it transpired, several White House staff members became alarmed. Lt. Col. Vindman immediately reported his concerns to NSC lawyers because, as he testified, ''[i]t is improper for the President of the United States to demand a foreign government investigate a U.S. citizen and a political opponent.'' [139]

84. Jennifer Williams, an advisor to Vice President Pence, testified that the call struck her as ''unusual and inappropriate'' and that ''the references to specific individuals and investigations, such as former Vice President Biden and his son, struck me as political in nature.'' [140] She believed President Trump's solicitation of an investigation was ''inappropriate'' because it ''appeared to be a domestic political matter.'' [141]

85. Timothy Morrison, Dr. Hill's successor as the NSC's Senior Director for Europe and Russia and Lt. Col. Vindman's supervisor, said that ''the call was not the full-throated endorsement of the Ukraine reform agenda that I was hoping to hear.'' [142] He too reported the call to NSC lawyers, worrying that the call would be ''damaging'' if leaked publicly.[143]

86. In response, Mr. Eisenberg and his deputy, Michael Ellis, tightly restricted access to the call summary, which was placed on a highly classified NSC server even though it did not contain any highly classified information.[144]

87. On July 26, the day after the call, Ambassador Sondland had lunch with State Department aides in Kyiv, including David Holmes, the Counselor for Political Affairs at the U.S. Embassy in Kyiv. During the lunch, Ambassador Sondland called President Trump directly from his cellphone. President Trump asked Ambassador Sondland whether President Zelensky was ''going to do the investigation.'' Ambassador Sondland stated that President Zelensky was ''going to do it'' and would ''do anything you ask him to.'' [145]

88. After the call, it was clear to Ambassador Sondland that ''a public statement from President Zelensky'' committing to the investigations was a ''prerequisite'' for a White House meeting.[146] He told Mr. Holmes that President Trump ''did not give a [explective] about Ukraine.'' Rather, the President cared only about ''big stuff'' that benefited him personally, like ''the Biden investigation that Mr. Giuliani was pushing,'' and that President Trump had directly solicited during the July 25 call.[147]

F. President Trump Conditioned the Release of Security Assistance for Ukraine, and Continued To Leverage a White House Meeting, To Pressure Ukraine To Launch Politically Motivated Investigations

89. As discussed further below, following the July 25 call, President Trump's representatives, including Ambassadors Sondland and Volker, in coordination with Mr. Giuliani, pressed the Ukrainians to issue a public statement announcing the investigations. At the same time, officials in both the United States and Ukraine became increasingly concerned about President Trump's continuing hold on security assistance.[148]

90. The Ukrainian government was aware of the hold by at least late July, around the time of President Trump's July 25 call with President Zelensky. On the day of the call itself, DOD officials learned that diplomats at the Ukrainian Embassy in Washington, D.C., had made multiple overtures to DOD and the State Department ''asking about security assistance.'' [149]

91. Around this time, two different officials at the Ukrainian Embassy approached Ambassador Volker's special advisor to ask her about the hold.[150]

92. By mid-August, before the hold was public, Lt. Col. Vindman also received inquiries from the Ukrainian Embassy. Lt. Col. Vindman testified that during this timeframe, ''it was no secret, at least within government and official channels, that security assistance was on hold.'' [151]

93. The former Ukrainian deputy foreign minister, Olena Zerkal, has acknowledged that she became aware of the hold on security assistance no later than July 30 based on a diplomatic cable—transmitted the previous week—from Ukrainian officials in Washington, D.C.[152] She said that President Zelensky's office had received a copy of the cable ''simultaneously.'' [153] Ms. Zerkal further stated that President Zelensky's top advisor, Andriy Yermak, told her ''to keep silent, to not comment without permission'' about the hold or about when the Ukrainian government became aware of it.[154]

94. In early August, Ambassadors Sondland and Volker, in coordination with Mr. Giuliani, endeavored to pressure President Zelensky to make a public statement announcing the investigations. On August 10—in a text message that showed the Ukrainians' understanding of the quid pro quo—President Zelensky's advisor, Mr. Yermak, told Ambassador Volker that, once a date was set for the White House meeting, he would ''call for a press briefing, announcing upcoming visit and outlining vision for the reboot of US-UKRAINE relationship, including among other things Burisma and election meddling in investigations[.]'' [155]

95. On August 11, Ambassador Sondland emailed two State Department officials, one of whom acted as a direct line to Secretary Pompeo, to inform them about the agreement for President Zelensky to issue a statement that would include an announcement of the two investigations. Ambassador Sondland stated that he expected a draft of the statement to be ''delivered for our review in a day or two[,]'' and that he hoped the statement would ''make the boss [i.e., President Trump] happy enough to authorize an invitation'' for a White House meeting.[156]

96. On August 12, Mr. Yermak texted Ambassador Volker an initial draft of the statement. The draft referred to ''the problem of

interference in the political processes of the United States,'' but it did not explicitly mention the two investigations that President Trump had requested in the July 25 call.[157]

97. The next day, Ambassadors Volker and Sondland discussed the draft statement with Mr. Giuliani, who told them, ''If [the statement] doesn't say Burisma and 2016, it's not credible[.]'' [158] As Ambassador Sondland would later testify, ''Mr. Giuliani was expressing the desires of the President of the United States, and we knew these investigations were important to the President.'' [159]

98. Ambassadors Volker and Sondland relayed this message to Mr. Yermak and sent him a revised statement that included explicit references to ''Burisma and the 2016 U.S. elections.'' [160]

99. In light of President Zelensky's anti-corruption agenda, Ukrainian officials resisted issuing the statement in August and, as a result, there was no movement toward scheduling the White House meeting.[161]

100. Meanwhile, there was growing concern about President Trump's continued hold on the security assistance for Ukraine. The hold remained in place through August, against the unanimous judgment of American national security officials charged with overseeing U.S.-Ukraine policy. For example, during a high-level interagency meeting in late July, officials unanimously advocated for releasing the hold—with the sole exception of OMB, which was acting under ''guidance from the President and from Acting Chief of Staff Mulvaney to freeze the assistance.'' [162] But even officials within OMB had internally recommended that the hold be removed because ''assistance to Ukraine is consistent with [U.S.] national security strategy,'' provides the ''benefit . . . of opposing Russian aggression,'' and is backed by ''bipartisan support.'' [163]

101. Without an explanation for the hold, and with President Trump already conditioning a White House visit on the announcement of the investigations, it became increasingly apparent to multiple witnesses that the security assistance was being withheld in order to pressure Ukraine to announce the investigations. As Ambassador Sondland testified, President Trump's effort to condition release of the security assistance on an announcement of the investigations was as clear as ''two plus two equals four.'' [164]

102. On August 22, Ambassador Sondland emailed Secretary Pompeo in an effort to ''break the logjam'' on the security assistance and the White House meeting. He proposed that President Trump should arrange to speak to President Zelensky during an upcoming trip to Warsaw, during which President Zelensky could ''look [President Trump] in the eye and tell him'' he was prepared ''to move forward publicly . . . on those issues of importance to Potus and to the U.S.''—i.e., the announcement of the two investigations.[165]

103. On August 28, news of the hold was publicly reported by *Politico*.[166]

104. As soon as the hold became public, Ukrainian officials expressed significant concern to U.S. officials.[167] They were deeply worried not only about the practical impact that the hold would have on efforts to fight Russian aggression, but also about the symbolic message the now-publicized lack of support from the Trump Administration sent to the Russian government, which would almost certainly seek to exploit any real or perceived crack in U.S. resolve toward Ukraine. Mr. Yermak and other Ukrainian officials told Ambassador Taylor that they were ''desperate'' and would be willing to travel to Washington to raise with U.S. officials the importance of the assistance.[168] The recently appointed Ukrainian prosecutor general later remarked, ''It's critically important for the west not to pull us into some conflicts between their ruling elites[.]'' [169]

105. On September 1—within days of President Trump rejecting the request from Secretaries Pompeo and Esper and Ambassador Bolton to release the hold [170]—Vice President Pence met with President Zelensky in Warsaw, Poland after President Trump cancelled his trip.[171]

106. In advance of this meeting, Ambassador Sondland told Vice President Pence that he ''had concerns that the delay in aid had become tied to the issue of investigations.'' [172] Sondland testified that Vice President Pence ''nodded like, you know, he heard what I said, and that was pretty much it.'' [173]

107. During the meeting that followed, which Ambassador Sondland also attended, ''the very first question'' that President Zelensky asked Vice President Pence related to the status of U.S. security assistance.[174] President Zelensky emphasized that ''the symbolic value of U.S. support in terms of security assistance . . . was just as valuable to the Ukrainians as the actual dollars.'' [175] He also voiced concern that ''any hold or appearance of reconsideration of such assistance might embolden Russia to think that the United States was no longer committed to Ukraine.'' [176]

108. Vice President Pence told President Zelensky that he would speak with President Trump that evening. Although Vice President Pence did speak with President Trump, the President still did not lift the hold.[177]

109. Following the meeting between Vice President Pence and President Zelensky, Ambassador Sondland pulled aside President Zelensky's advisor, Mr. Yermak, to explain that ''the resumption of U.S. aid would likely not occur until Ukraine took some kind of action on [issuing a] public statement'' about the investigations.[178]

110. Immediately following that conversation, Ambassador Sondland walked over to Mr. Morrison, who had been standing across the room observing their interactions. Ambassador Sondland told Mr. Morrison that ''what he had communicated [to Mr. Yermak] was that . . . what could help [Ukraine] move the aid was if the prosecutor general would go to the mike [sic] and announce that he was opening'' the investigations.[179]

111. Later that day, Mr. Morrison reported this conversation to Ambassador Bolton, who advised him to ''stay out of it'' and to brief the NSC's lawyers. Mr. Morrison subsequently reported the conversation to Mr. Eisenberg.[180]

112. Mr. Morrison also informed Ambassador Taylor about his conversation with Ambassador Sondland. Ambassador Taylor was ''alarmed by what Mr. Morrison told [him] about the Sondland-Yermak conversation.'' [181] He followed up by texting Ambassador Sondland, ''Are we now saying that security assistance and WH meeting are conditioned on investigations?'' Ambassador Sondland responded, ''Call me.'' [182]

113. Ambassadors Sondland and Taylor then spoke by telephone. Ambassador Sondland again relayed what he told Mr. Yermak and explained that he had made a ''mistake'' in telling Ukrainian officials that only the White House meeting was conditioned on a public announcement of the investigations. He clarified that ''everything''—the White House meeting *and* security assistance for Ukraine—was conditioned on the announcement of the investigations.[183] Ambassador Sondland explained to Ambassador Taylor that ''President Trump wanted President Zelensky in a public box, by making a public statement about ordering such investigations.'' [184]

114. On September 7, President Trump and Ambassador Sondland spoke by telephone.[185] As Ambassador Sondland relayed later that day during a call with Mr. Morrison, President Trump told him ''that there was no quid pro quo, but President Zelensky must announce the opening of the investigations and he should want to do it.'' [186]

115. Mr. Morrison conveyed the substance of the September 7 call between President Trump and Ambassador Sondland to Ambassador Taylor. Mr. Morrison said that the call had given him ''a sinking feeling'' because he feared the security assistance would not be released before September 30, the end of the fiscal year, and because he ''did not think it was a good idea for the Ukrainian President to . . . involve himself in our politics.'' [187] At Ambassador Bolton's direction, Mr. Morrison reported Ambassador Sondland's description of the President's statements to the NSC lawyers.[188]

116. The next day, September 8, Ambassador Sondland confirmed in a phone call with Ambassador Taylor that he had spoken to President Trump and that ''President Trump was adamant that President Zelensky himself had to'' announce the investigations publicly.[189]

117. Ambassador Sondland also told Ambassador Taylor that he had passed President Trump's message directly to President Zelensky and Mr. Yermak and had told them that ''although this was not a quid pro quo, if President Zelensky did not clear things up in public, we would be at a stalemate''—meaning ''Ukraine would not receive the much-needed military assistance.'' [190]

118. Early the next morning, on September 9, Ambassador Taylor texted Ambassadors Sondland and Volker: ''As I said on the phone, I think it's crazy to withhold security assistance for help with a political campaign.'' [191]

119. The Ukrainians succumbed to the pressure. In early September, President Zelensky agreed to do a televised interview, during which he would publicly announce the investigations. The Ukrainians made arrangements for the interview to occur on CNN later in September.[192]

120. The White House subsequently confirmed that the release of the security assistance had been conditioned on Ukraine's announcement of the investigations. During a White House press conference on October 17, Acting Chief of Staff Mulvaney acknowledged that he had discussed security assistance with the President and that the President's decision to withhold it was directly tied to his desire that Ukraine investigate alleged Ukrainian interference in the 2016 U.S. election.[193]

121. After a reporter attempted to clarify this explicit acknowledgement of a ''quid pro quo,'' Mr. Mulvaney replied, ''We do that all the time with foreign policy.'' He added, ''I have news for everybody: get over it. There is going to be political influence in foreign policy.'' [194]

122. Multiple foreign policy and national security officials testified that the pursuit of investigations into the Bidens and alleged Ukrainian interference in the 2016 election was not part of official U.S. policy.[195] Instead, as Dr. Hill described, these investigations were part of a ''domestic political errand'' of President Trump.[196] Mr. Kent further explained that urging Ukraine to engage in ''selective politically associated investigations or prosecutions'' undermines our longstanding efforts to promote the rule of law abroad.[197]

123. Ambassador Volker, in response to an inquiry from President Zelensky's advisor, Mr. Yermak, confirmed that the U.S. Department of Justice (DOJ) did not make an official request for Ukraine's assistance in these investigations.[198]

124. Within hours after the White House publicly released a record of the July 25 call, DOJ itself confirmed in a statement that no such request was ever made:

The President has not spoken with the Attorney General about having Ukraine investigate anything related to former Vice President Biden or his son. The President has not asked the Attorney General to contact Ukraine—on this or any other matter. The Attorney General has not communicated with Ukraine—on this or any other subject.[199]

G. President Trump Was Forced to Lift the Hold but Has Continued to Solicit Foreign Interference in the Upcoming Election

125. As noted above, by early September 2019, President Zelensky had signaled his willingness to announce the two investigations to secure a White House meeting and the security assistance. He was scheduled to make the announcement during a CNN interview later in September, but other events intervened.[200]

126. On September 9, the House Permanent Select Committee on Intelligence, the Committee on Oversight and Reform, and the Committee on Foreign Affairs announced a joint investigation into the scheme by President Trump ''to improperly pressure the Ukrainian government to assist the President's bid for reelection.'' [201] The same day, the Committees sent document production and preservation requests to the White House and the State Department.[202]

127. NSC staff members believed that the Congressional investigation ''might have the effect of releasing the hold'' on Ukraine military assistance, because it would have been ''potentially politically challenging'' to ''justify that hold.'' [203]

128. Later that day, the Inspector General of the Intelligence Community (ICIG) wrote to the Chairman and Ranking Member of the Intelligence Committee notifying them that a whistleblower had filed a complaint on August 12 that the ICIG had determined to be both an ''urgent concern'' and ''credible.'' The ICIG did not disclose the contents of the complaint.[204]

129. The ICIG further stated that the Acting Director of National Intelligence (DNI) had taken the unprecedented step of withholding the whistleblower complaint from Congress.[205] It was later revealed that the Acting DNI had done so as a result of communications with the White House and the Department of Justice.[206] The next day, September 10, Chairman Schiff wrote to Acting DNI Joseph Maguire to express his concern about the Acting DNI's ''unprecedented departure from past practice'' in withholding the whistleblower complaint and observed that the ''failure to transmit to the Committee an urgent and credible whistleblower complaint, as required by law, raises the prospect that an urgent matter of a serious nature is being purposefully concealed from the Committee.'' [207]

130. The White House was aware of the contents of the whistleblower complaint since at least August 26, when the Acting DNI informed the White House Counsel's Office of the complaint.[208] White House Counsel Pat Cipollone and Mr. Eisenberg reportedly briefed President Trump on the whistleblower complaint in late August and discussed whether they had to give it to Congress.[209]

131. On September 11—two days after the ICIG notified Congress of the whistleblower complaint and the three House Committees announced their investigation—President Trump lifted the hold on security assistance. As with the implementation of the hold, no credible reason was provided for lifting the hold.[210] At the time of the release, there had been no discernible changes in international assistance commitments for Ukraine or Ukrainian anti-corruption reforms.[211]

132. Because of the hold the President placed on security assistance for Ukraine, DOD was unable to spend approximately $35 million—or 14 percent—of the funds appropriated by Congress for fiscal year 2019.[212]

133. Congress was forced to pass a new law to extend the funding in order to ensure the full amount could be used by Ukraine to defend itself.[213] Still, by early December 2019, Ukraine had not received approximately $20 million of the military assistance.[214]

134. Although the hold was lifted, the White House still had not announced a date for President Zelensky's meeting with President Trump, and there were indications that President Zelensky's interview with CNN would still occur.[215]

135. On September 18, a week before President Trump was scheduled to meet with President Zelensky on the sidelines of the U.N. General Assembly in New York, Vice President Pence had a telephone call with President Zelensky. During the call, Vice President Pence ''ask[ed] a bit more about . . . how Zelensky's efforts were going.'' [216] Additional details about this call were provided to the House by Vice President Pence's advisor, Jennifer Williams, but were classified by the Office of the Vice President.[217] Despite repeated requests, the Vice President has refused to declassify Ms. Williams' supplemental testimony.

136. On September 18 or 19, at the urging of Ambassador Taylor,[218] President Zelensky cancelled the CNN interview.[219]

137. To date, almost nine months after the initial invitation was extended by President Trump on April 21, a White House meeting for President Zelensky has not occurred.[220] Since the initial invitation, President Trump has met with more than a dozen world leaders at the White House, including a meeting in the Oval Office with the Foreign Minister of Russia on December 10.[221]

138. Since lifting the hold, and even after the House impeachment inquiry was announced on September 24, President Trump has continued to press Ukraine to investigate Vice President Biden and alleged 2016 election interference by Ukraine.[222]

139. On September 24, in remarks at the opening session of the U.N. General Assembly, President Trump stated: ''What Joe Biden did for his son, that's something they [Ukraine] should be looking at.'' [223]

140. On September 25, in a joint public press availability with President Zelensky, President Trump stated that ''I want him to do whatever he can'' in reference to the investigation of the Bidens.[224] The same day, President Trump denied that his pursuit of the investigation involved a quid pro quo.[225]

141. On September 30, during remarks at the swearing-in of the new Labor Secretary, President Trump stated: ''Now, the new President of Ukraine ran on the basis of no corruption. . . . But there was a lot of corruption having to do with the 2016 election against us. And we want to get to the bottom of it, and it's very important that we do.'' [226]

142. On October 3, when asked by a reporter what he had hoped President Zelensky would do following their July 25 call, President Trump responded: ''Well, I would think that, if they were honest about it, they'd start a major investigation into the Bidens. It's a very simple answer.'' [227] The President also suggested that ''China should start an investigation into the Bidens, because what happened in China is just about as bad as what happened with—with Ukraine.[228]

143. On October 4, President Trump equated his interest in ''looking for corruption'' to the investigation of two particular subjects: the Bidens and alleged Ukrainian interference in the 2016 election. He told reporters:

What I want to do—and I think I have an obligation to do it, probably a duty to do it: corruption—we are looking for corruption. When you look at what Biden and his son did, and when you look at other people—what they've done. And I believe there was tremendous corruption with Biden, but I think there was beyond—I mean, beyond corruption—having to do with the 2016 campaign, and what these lowlifes did to so many people, to hurt so many people in the Trump campaign—which was successful, despite all of the fighting us. I mean, despite all of the unfairness.[229]

When asked by a reporter, ''Is someone advising you that it is okay to solicit the help of other governments to investigate a potential political opponent?,'' Trump replied in part, ''Here's what's okay: If we feel there's corruption, like I feel there was in the 2016 campaign—there was tremendous corruption against me—if we feel there's corruption, we have a right to go to a foreign country.'' [230]

144. As the House's impeachment inquiry unfolded, Mr. Giuliani, on behalf of the President, also continued to urge Ukraine to pursue the investigations and dig up dirt on former Vice President Biden. Mr. Giuliani's own statements about these efforts further confirm that he has been working in furtherance of the President's personal and political interests.[231]

145. During the first week of December, Mr. Giuliani traveled to Kyiv and Budapest to meet with both current and former Ukrainian government officials,[232] including a current Ukrainian member of Parliament who attended a KGB school in Moscow and has led calls to investigate Burisma and the Bidens.[233] Mr. Giuliani also met with the corrupt former prosecutor generals, Viktor Shokin and Yuriy Lutsenko, who had promoted the false allegations underlying the investigations President Trump wanted.[234] Mr. Giuliani told the *New York Times* that in meeting with Ukrainian officials he was acting on behalf of his client, President Trump: ''[L]ike a good lawyer, I am gathering evidence to defend my client against the false charges being leveled against him.'' [235]

146. During his trip to Ukraine, on December 5, Mr. Giuliani tweeted: ''The conversation about corruption in Ukraine was based on compelling evidence of criminal conduct by then VP Biden, in 2016, that has not been resolved and until it is will be a major obstacle to the U.S. assisting Ukraine with its anti-corruption reforms.'' [236] Not only was Mr. Giuliani perpetuating the false allegations against Vice President Biden, but he was reiterating the threat that President Trump had used to pressure President Zelensky to announce the investigations: that U.S. assistance to Ukraine could be in jeopardy until Ukraine investigated Vice President Biden.

147. Mr. Giuliani told the Wall Street Journal that when he returned to New York on December 7, President Trump called him as his plane was still taxiing down the runway. '''What did you get?' he said Mr. Trump asked. 'More than you can imagine,' Mr. Giuliani replied.'' [237]

148. Later that day, President Trump told reporters that he was aware of Mr. Giuliani's efforts in Ukraine and believed that Mr. Giuliani wanted to report the information he'd gathered to the Attorney General and Congress.[238]

149. On December 17, Mr. Giuliani confirmed that President Trump has been ''very supportive'' of his continuing efforts to dig up dirt on Vice President Biden in Ukraine and that they are ''on the same page.'' [239]

150. Such ongoing efforts by President Trump, including through his personal attorney, to solicit an investigation of his political opponent have undermined U.S. credibility. On September 14, Ambassador Volker advised Mr. Yermak against the Zelensky Administration conducting an investigation into President Zelensky's own former political rival, former Ukrainian President Petro Poroshenko. When Ambassador Volker raised concerns about such an investigation, Mr. Yermak retorted, ''What, you mean like asking us to investigate Clinton and Biden?'' [240] Ambassador Volker offered no response.[241]

151. Mr. Holmes, a career diplomat, highlighted this hypocrisy: ''While we had advised our Ukrainian counterparts to voice a commitment to following the rule of law and generally investigating credible corruption allegations,'' U.S. officials were making ''a demand that President Zelensky personally commit on a cable news channel to a specific investigation of President Trump's political rival.'' [242]

H. President Trump's Conduct Was Consistent with His Previous Invitations of Foreign Interference in U.S. Elections

152. President Trump's efforts to solicit Ukraine's interference in the 2020 U.S. Presidential election to help his own reelection campaign were consistent with his prior solicitation and encouragement of Russia's interference in the 2016 election, when the Trump Campaign ''expected it would benefit electorally from information stolen and released through Russian efforts.'' [243]

153. As a Presidential candidate, Mr. Trump repeatedly sought to benefit from Russia's actions to help his campaign. For example, during a public rally on July 27, 2016, then-candidate Trump declared: ''Russia, if you're listening, I hope you're able to find the 30,000 emails that are missing'' from opposing candidate Hillary Clinton's personal server.[244] Within hours, Russian hackers targeted Clinton's personal office for the first time.[245]

154. Days earlier, WikiLeaks had begun releasing emails and documents that were stolen by Russian military intelligence services in order to damage the Clinton campaign.[246] WikiLeaks continued releasing stolen documents through October 2016.[247] Then-candidate Trump repeatedly applauded and sought to capitalize on WikiLeaks's releases of these stolen documents, even after Russia's involvement was heavily reported by the press.[248] Members of the Trump Campaign also planned messaging and communications strategies around releases by WikiLeaks.[249] In the last month of the campaign, then-candidate Trump publicly referred to the emails hacked by Russia and disseminated by WikiLeaks over 150 times.[250]

155. Multiple members of the Trump Campaign used additional channels to seek Russia's assistance in obtaining damaging information about Clinton. For example, senior representatives of the Trump Campaign—including the Campaign's chairman and the President's son—met with a Russian attorney in June 2016 who had offered to provide damaging information about Clinton from the Russian government.[251] A foreign policy advisor to the Trump Campaign also met repeatedly with people connected to the Russian government and their associates, one of whom claimed to have ''dirt'' on Clinton in the form of ''thousands of emails.'' [252]

156. Even after Special Counsel Mueller released his report, President Trump confirmed his willingness to benefit from foreign election interference. When asked during a televised interview in June 2019 whether he would accept damaging information from a foreign government about a political opponent, the President responded, ''I think I'd take it.'' [253] President Trump declared that he sees ''nothing wrong with listening'' to a foreign power that offers information detrimental to a political adversary.[254] Asked whether such an offer of information should be reported to law enforcement, President Trump retorted: ''Give me a break, life doesn't work that way.'' [255] Just weeks later, President Trump froze security assistance to Ukraine as his agents were pushing that country to pursue investigations that would help the President's reelection campaign.[256]

157. In addition, President Trump's request for the investigations on the July 25 call with President Zelensky took place one day after former Special Counsel Mueller testified before the House Judiciary Committee and the House Permanent Select Committee on Intelligence about the findings of his investigation into Russia's interference in the 2016 Presidential election and President Trump's efforts to undermine that investigation.[257] During his call with President Zelensky, President Trump derided former Special Counsel Mueller's ''poor performance'' in his July 24 testimony and speculated that ''that whole nonsense . . . started with Ukraine.'' [258]

II. President Trump's Obstruction of Congress

158. President Trump ordered categorical obstruction of the impeachment inquiry undertaken by the House under Article I of the Constitution, which vests the House with the ''sole Power of Impeachment.'' [259]

A. The House Launched an Impeachment Inquiry

159. During the 116th Congress, a number of Committees of the House have undertaken investigations into allegations of misconduct by President Trump and his Administration, including to determine whether to recommend articles of impeachment.[260]

160. As discussed above, on September 9, the Intelligence Committee and the Committees on Oversight and Reform and Foreign Affairs announced they would conduct a joint investigation into the President's scheme to pressure Ukraine to announce the politically motivated investigations.[261]

161. Given the gravity of the allegations that President Trump was soliciting foreign interference in the upcoming 2020 election, Speaker Nancy P. Pelosi announced on September 24 that the House was ''moving forward with an official impeachment inquiry.'' [262] Speaker Pelosi directed the Committees to ''proceed with their investigations under that umbrella of [an] impeachment inquiry.'' [263]

162. On October 31, the House enacted a resolution confirming the Committees' authority to conduct the impeachment inquiry and adopting procedures governing the inquiry.[264]

163. The procedures adopted by the House afforded procedural privileges to the President that were equivalent to, or in some instances exceeded, those afforded during prior impeachment inquiries.[265] Transcripts of all witness interviews and depositions were released to the public, and President Trump was offered—but refused—multiple opportunities to have his counsel participate in proceedings before the Judiciary Committee, including by cross-examining witnesses and presenting evidence.[266]

B. President Trump Ordered Categorical Obstruction of the House's Impeachment Inquiry

164. Even before the House launched its impeachment inquiry into President Trump's misconduct concerning Ukraine, he rejected Congress's Article I investigative and oversight authority, proclaiming, ''[W]e're fighting all the subpoenas,'' [267] and ''I have an Article II, where I have the right to do whatever I want as president.'' [268]

165. In response to the House impeachment inquiry regarding Ukraine, the Executive Branch categorically refused to provide any requested documents or information at President Trump's direction.

166. On September 9, 2019, three House Committees sent a letter to White House Counsel Pat Cipollone requesting six categories of documents relevant to the Ukraine investigation by September 16.[269] When the White House did not respond, the Committees sent a follow-up letter on September 24.[270]

167. Instead of responding directly to the Committees, the President publicly declared the impeachment inquiry ''a disgrace,'' and stated that ''it shouldn't be allowed'' and that ''[t]here should be a way of stopping it.'' [271]

168. When the White House still did not respond to the Committees' request, the Committees issued a subpoena compelling the White House to turn over documents.[272]

169. The President's response to the House's inquiry—sent by Mr. Cipollone on October 8 sought to accomplish the President's goal of ''stopping'' the House's investigation. Mr. Cipollone wrote ''on behalf of President Donald J. Trump'' to notify Congress that ''President Trump cannot permit his Administration to participate in this partisan inquiry under these circumstances.'' [273]

170. Despite the Constitution's placement of the ''sole Power'' of impeachment in the House, Mr. Cipollone's October 8 letter opined that the House's inquiry was ''constitutionally invalid,'' ''lack[ed] . . . any basis,'' ''lack[ed] the necessary authorization for a valid impeachment,'' and was merely ''labeled . . . as an 'impeachment inquiry.' '' [274]

171. The letter's rhetoric aligned with the President's public campaign against the impeachment inquiry, which he has branded ''a COUP, intended to take away the Power of the People,'' [275] an ''unconstitutional abuse of power,'' [276] and an ''open war on American Democracy.'' [277]

172. Although President Trump has categorically sought to obstruct the House's impeachment inquiry, he has never formally asserted a claim of executive privilege as to any document or testimony. Mr. Cipollone's October 8 letter refers to ''long-established Executive Branch confidentiality interests and privileges'' but the President did not actually assert executive privilege.[278] Similarly, a Department of Justice Office of Legal Counsel November 1, 2019 opinion only recognized that information responsive to the subpoenas was ''*potentially* protected by executive privilege.'' [279]

173. In addition, the President and his agents have spoken at length about these events to the press and on social media. Since the impeachment inquiry was announced on September 24, the President has made numerous public statements about his communications with President Zelensky and his decision-making relating to the hold on security assistance.[280]

174. The President's agents have done the same. For example, on October 16, Secretary Perry gave an interview to the *Wall Street Journal*. During the interview, Secretary Perry stated that after the May 23 meeting at which President Trump refused to schedule a White House meeting with President Zelensky, Secretary Perry ''sought out Rudy Giuliani this spring at President Trump's direction to address Mr. Trump's concerns about alleged Ukrainian corruption.'' [281] During a phone call with Secretary Perry, Mr. Giuliani said, ''Look, the president is really concerned that there are people in Ukraine

that tried to beat him during this presidential election. . . . He thinks they're corrupt and . . . that there are still people over there engaged that are absolutely corrupt.''[282]

175. On October 17, Acting Chief of Staff Mulvaney acknowledged during a White House press conference that he discussed security assistance with the President and that the President's decision to withhold it was directly tied to his desire that Ukraine investigate alleged Ukrainian interference in the 2016 U.S. election.[283]

176. On December 3, 2019, the Intelligence Committee transmitted a detailed nearly 300-page report documenting its findings about this scheme and about the related investigation into it, to the Judiciary Committee.[284] The Judiciary Committee held public hearings evaluating the constitutional standard for impeachment and the evidence against President Trump—in which the President's counsel was invited to participate, but declined—and then reported two Articles of Impeachment to the House.[285]

177. The President maintained his obstructionist position throughout this process, declaring the House's investigation ''illegitimate'' in a letter to Speaker Nancy Pelosi on December 17, 2019.[286] President Trump further attempted to undermine the House's inquiry by dismissing impeachment as ''illegal, invalid, and unconstitutional''[287] and by intimidating and threatening an anonymous Intelligence Community whistleblower as well as the patriotic public servants who honored their subpoenas and testified before the House.[288]

178. On December 18, 2019, the House voted to impeach President Trump and adopted two Articles of Impeachment.[289]

C. Following President Trump's Directive, the Executive Branch Refused to Produce Requested and Subpoenaed Documents

179. Adhering to President Trump's directive, every Executive Branch agency that received an impeachment inquiry request or subpoena defied it.[290]

180. House Committees issued document requests or subpoenas to the White House, the Office of the Vice President, OMB, the Department of State, DOD, and the Department of Energy.[291]

181. In its response, the Office of the Vice President echoed Mr. Cipollone's assertions that the impeachment inquiry was procedurally invalid,[292] while agencies such as OMB and DOD expressly cited the President's directive.[293]

182. The Executive Branch has refused to produce any documents in response to the Committees' valid, legally binding subpoenas, even though witness testimony has revealed that highly relevant records exist.[294]

183. Indeed, by virtue of President Trump's order, not a single document has been produced by the White House, the Office of the Vice President, OMB, the Department of State, DOD, or the Department of Energy in response to 71 specific, individualized requests or demands for records in their possession, custody, or control. These agencies and offices also blocked many current and former officials from producing records to the Committees.[295]

184. Certain witnesses, however, defied the President's order and identified the substance of key documents. For example, Lt. Col. Vindman described a ''Presidential Decision Memo'' he prepared in August that conveyed the ''consensus views'' among foreign policy and national security officials that the hold on aid to Ukraine should be released.[296] Other witnesses identified additional documents that the President and various agencies were withholding from Congress that were directly relevant to the impeachment inquiry.[297]

185. Some responsive documents have been released by the State Department, DOD, and OMB pursuant to judicial orders issued in response to lawsuits filed under the Freedom of Information Act (FOIA).[298] Although limited in scope and heavily redacted, these FOIA productions confirm that the Trump Administration is withholding highly pertinent documents from Congress without any valid legal basis.[299]

D. President Trump Ordered Top Aides Not to Testify, Even Pursuant to Subpoena

186. President Trump directed government witnesses to violate their legal obligations and defy House subpoenas—regardless of their offices or positions. In some instances, the President personally directed that senior aides defy subpoenas on the ground that they are ''absolutely immune'' from compelled testimony.[300] Other officials refused to appear ''as directed by'' Mr. Cipollone's October 8 letter.[301] Still others refused to appear because—consistent with the House Deposition Rules drafted by the then-majority Republicans—agency counsel was not permitted in the depositions.[302]

187. This Administration-wide effort to prevent witnesses from providing testimony was coordinated and comprehensive. In total, twelve current or former Administration officials refused to testify as part of the House's impeachment inquiry into the Ukrainian matter, nine of whom did so in defiance of duly authorized subpoenas.[303] House Committees advised such witnesses that their refusal to testify may be used as an adverse inference against the President.[304] Nonetheless—despite being instructed by senior political appointees not to cooperate with the House's impeachment inquiry, in directives that frequently cited or enclosed copies of Mr. Cipollone's October 8 letter[305]—many current and former officials complied with their legal obligations to appear for testimony.

188. House Committees conducted depositions or transcribed interviews of seventeen witnesses.[306] All members of the Committees—as well as staff from the Majority and the Minority—were permitted to attend. The Majority and Minority were allotted an equal amount of time to question witnesses.[307]

189. In late November 2019, twelve of these witnesses testified in public hearings convened by the Intelligence Committee, including three witnesses called by the Minority.[308]

190. Unable to silence certain witnesses, President Trump resorted to intimidation tactics to penalize them.[309] He also levied sustained attacks on the anonymous whistleblower.[310]

E. President Trump's Conduct Was Consistent with His Previous Efforts to Obstruct Investigations into Foreign Interference in U.S. Elections

191. President Trump's obstruction of the House's impeachment inquiry was consistent with his previous efforts to undermine Special Counsel Mueller's investigation of Russia's interference in the 2016 election and of the President's own misconduct.

192. President Trump repeatedly used his powers of office to undermine and derail the Mueller investigation, particularly after learning that he was personally under investigation for obstruction of justice.[311] Among other things, President Trump ordered White House Counsel Don McGahn to fire Special Counsel Mueller;[312] instructed Mr. McGahn to create a record and issue statements falsely denying this event;[313] sought to curtail Special Counsel Mueller's investigation in a manner exempting his own prior conduct;[314] and tampered with at least two key witnesses.[315] President Trump has since instructed McGahn to defy a House Committee's subpoena for testimony, and his DOJ has erroneously argued that the courts can play no role in enforcing Congressional subpoenas.[316]

193. Special Counsel Mueller's investigation—like the House's impeachment inquiry—sought to uncover whether President Trump coordinated with a foreign government in order to obtain an improper advantage during a Presidential election.[317] And the Mueller investigation—like the House's impeachment inquiry—exposed President Trump's eagerness to benefit from foreign election interference.[318] In the former instance, the President used his powers of office to undermine an investigation conducted by officials within the Executive Branch.[319] In the latter, he attempted to block the United States House of Representatives from exercising its ''sole Power of Impeachment'' assigned by the Constitution. In both instances, President Trump obstructed investigations into foreign election interference to hide his own misconduct.

1. *See Report of the H. Permanent Select Comm. on Intelligence on the Trump-Ukraine Impeachment Inquiry, together with Minority Views*, H. Rep. No. 116–335 (2019); *Impeachment of Donald J. Trump, President of the United States: Report of the Comm. on the Judiciary of the H. of Representatives, together with Dissenting Views, to Accompany H. Res. 755*, H. Rep. No. 116–346 (2019).

2. U.S. Const., Art. I, §2, cl. 5.

3. Transcript, Deposition of Lt. Colonel Alexander S. Vindman Before the H. Permanent Select Comm. on Intelligence 16 (Oct. 29, 2019) (Vindman Dep. Tr.); Anton Troianovski, *Comedian Volodymyr Zelensky Unseats Incumbent in Ukraine's Presidential Election, Exit Polls Show*, Wash. Post (Apr. 21, 2019), https://perma.cc/J8KE-2UJU.

4. *Id.*

5. *See* White House, *Memorandum of Telephone Conversation* (Apr. 21, 2019) (Apr. 21 Memorandum), https://perma.cc/EY4N-B8VS; Deb Riechmann et al., *Conflicting White House Accounts of 1st Trump-Zelenskiy Call*, Associated Press (Nov. 15, 2019), https://perma.cc/A6U9-89ZG.

6. Apr. 21 Memorandum at 2, https://perma.cc/EY4N-B8VS.

7. Transcript, *Impeachment Inquiry: Ambassador William B. Taylor and George Kent: Hearing Before the H.Permanent Select Comm. on Intelligence*, 116th Cong. 40 (Nov. 13, 2019) (Taylor-Kent Hearing Tr.).

8. *See, e.g.*, Transcript, Interview of Kurt Volker Before the H. Permanent Select Comm. on Intelligence 58–59 (Oct. 3, 2019) (Volker Interview Tr.); Transcript, Interview of George Kent Before the H. Permanent Select Comm. on Intelligence 202 (Oct. 15, 2019) (Kent Dep. Tr.); Transcript, Deposition of Fiona Hill Before the H. Permanent Select Comm. on Intelligence 64–65 (Oct. 14, 2019) (Hill Dep. Tr.); see also Transcript, Deposition of David A. Holmes Before the H. Permanent Select Comm. on Intelligence 18 (Nov. 15, 2019) (Holmes Dep. Tr.) (''[A] White House visit was critical to President Zelensky,'' because ''[h]e needed to demonstrate U.S. support at the highest levels, both to advance his ambitious anti-corruption agenda at home and to encourage Russian President Putin to take seriously President Zelensky's peace efforts.'').

9. Transcript, Deposition of Jennifer Williams Before the H. Permanent Select Comm. on Intelligence 36–37 (Nov. 7, 2019) (Williams Dep. Tr.).

10. Matt Viser, *Joe Biden to Enter 2020 Presidential Race with Thursday Video Announcement*, Wash. Post (Apr. 23, 2019), https://perma.cc/M2B9-6J48.

11. Transcript, *Impeachment Inquiry: Ambassador Marie ''Masha'' Yovanovitch: Hearing*

Before the H. Permanent Select Comm. on Intelligence, 116th Cong. 21–22 (Nov. 15, 2019) (Yovanovitch Hearing Tr.); Transcript, *Impeachment Inquiry: Fiona Hill and David Holmes: Hearing Before the H. Permanent Select Comm. on Intelligence*, 116th Cong. 18–19 (Nov. 21, 2019) (Hill-Holmes Hearing Tr.); Holmes Dep. Tr. at 13–14, 142.

12. *See, e.g.*, Taylor-Kent Hearing Tr. at 25; Yovanovitch Hearing Tr. at 21–22; Hill-Holmes Hearing Tr. at 19–21.

13. *See, e.g.*, Donald J. Trump (@realDonaldTrump), Twitter (Mar. 20, 2019, 7:40 PM), https://perma.cc/D4UT-5M6F (referencing Sean Hannity's interview with John Solomon regarding his opinion piece in *The Hill* titled *As Russia Collusion Fades, Ukrainian Plot to Help Clinton Emerges* (Mar. 20, 2019), https://perma.cc/2M35-LUQE).

14. Yovanovitch Hearing Tr. at 21–22, 34–35.

15. Adam Entous, *The Ukrainian Prosecutor Behind Trump's Impeachment*, New Yorker (Dec. 16, 2019), https://perma.cc/5XMR-BS8L (quoting Mr. Giuliani).

16. *See* White House, *Memorandum of Telephone Conversation* 4 (July 25, 2019) (July 25 Memorandum), https://perma.cc/8JRD-6K9V; Kyle Cheney, ''*Of Course I Did'': Giuliani Acknowledges Asking Ukraine to Investigate Biden*, Politico (Sept. 19, 2019), https://perma.cc/J7PY-N3SG.

17. July 25 Memorandum at 3, https://perma.cc/8JRD-6K9V; *see also Remarks by President Trump and President Putin of the Russian Federation in Joint Press Conference*, White House (July 16, 2018), https://perma.cc/6M5R-XW7F (''[A]ll I can do is ask the question. My people came to me, Dan Coates came to me and some others—they said they think it's Russia. I have President Putin; he just said it's not Russia. I will say this: I don't see any reason why it would be, but I really do want to see the server.''); *Transcript of AP Interview with Trump*, Associated Press (Apr. 23, 2017), https://perma.cc/2EFT-84N8 (''TRUMP: . . . Why wouldn't (former Hillary Clinton campaign chairman John) Podesta and Hillary Clinton allow the FBI to see the server? They brought in another company that I hear is Ukrainian-based. AP: CrowdStrike? TRUMP: That's what I heard. I heard it's owned by a very rich Ukrainian, that's what I heard.'').

18. *See, e.g.*, Volker Interview Tr. at 203.

19. *See, e.g.*, Press Release, Senator Rob Portman, Portman, Durbin, Shaheen, and Senate Ukraine Caucus Reaffirm Commitment to Help Ukraine Take on Corruption (Feb. 12, 2016), https://perma.cc/9WD2-CZ29 (quoting bipartisan letter urging then-President Poroshenko of Ukraine ''to press ahead with urgent reforms to the Prosecutor General's office and judiciary'').

20. *See, e.g.*, Kent Dep. Tr. at 45, 91–94 (describing ''a broad-based consensus'' among the United States, European allies, and international financial institutions that Mr. Shokin was ''a typical Ukraine prosecutor who lived a lifestyle far in excess of his government salary, who never prosecuted anybody known for having committed a crime'' and who ''covered up crimes that were known to have been committed.''); Daryna Krasnolutska et al., *Ukraine Prosecutor Says No Evidence of Wrongdoing by Bidens*, Bloomberg (May 16, 2019), https://perma.cc/YYX8-U33C (quoting Yuriy Lutsenko, Ukraine's then-Prosecutor General: ''Hunter Biden did not violate any Ukrainian laws—at least as of now, we do not see any wrongdoing. A company can pay however much it wants to its board . . . . Biden was definitely not involved . . . . We do not have any grounds to think that there was any wrongdoing starting from 2014 [when Hunter Biden joined the board of Burisma].'').

21. *See* Kent Dep. Tr. at 45, 93–94; Volker Interview Tr. at 36–37, 330, 355.

22. *See* Kent Dep. Tr. at 101–02.

23. Office of the Dir. of Nat'l Intelligence, ICA 2017–01D, *Assessing Russian Activities and Intentions in Recent U.S. Elections* (Jan. 6, 2017), https://perma.cc/M4A3-DWML; *see, e.g.*, *id.* at ii (''We assess Russian President Vladimir Putin ordered an influence campaign in 2016 aimed at the US presidential election. Russia's goals were to undermine public faith in the US democratic process, denigrate Secretary Clinton, and harm her electability and potential presidency. We further assess Putin and the Russian Government developed a clear preference for President-elect Trump. We have high confidence in these judgements.'').

24. Senate Select Comm. on Intelligence, *Russian Active Measures Campaigns and Interference in the 2016 U.S. Election, Vol. II* (May 8, 2018), https://perma.cc/96EC-22RU; *see, e.g.*, *id.* at 4–5 (''The Committee found that the [Russian-based Internet Research Agency (IRA)] sought to influence the 2016 U.S. presidential election by harming Hillary Clinton's chances of success and supporting Donald Trump at the direction of the Kremlin. . . . The Committee found that the Russian government tasked and supported the IRA's interference in the 2016 U.S. election.'').

25. Robert S. Mueller III, *Report on the Investigation into Russian Interference in the 2016 Presidential Election*, Vol. I at 1 (2019) (Mueller Report), https://perma.cc/DN3N-9UW8.

26. Luke Barr & Alexander Mallin, *FBI Director Pushes Back on Debunked Conspiracy Theory About 2016 Election Interference*, ABC News (Dec. 9, 2019), https://perma.cc/8JKC-6RB8 (quoting Mr. Wray).

27. Hill-Holmes Hearing Tr. at 40–41, 56–57.

28. Press Statement, President of Russ., Joint News Conference with Hungarian Prime Minister Viktor Orban (Feb. 2, 2017), https://perma.cc/5Z2R-ZECB (''[A]s we all know, during the presidential campaign in the United States, the Ukrainian government adopted a unilateral position in favour of one candidate. More than that, certain oligarchs, certainly with the approval of the political leadership, funded this candidate, or female candidate, to be more precise.'').

29. *See* Kent Dep. Tr. at 338; @realDonaldTrump (May 3, 2019, 10:06 AM) https://perma.cc/7LS9-P35U.

30. Hill Dep. Tr. at 234; *see also id.* at 235.

31. Chris Francescani, *President Trump's Former National Security Advisor ''Deeply Disturbed'' by Ukraine Scandal: ''Whole World Is Watching*,'' ABC News (Sept. 29, 2019), https://perma.cc/C76K-7SMA (quoting Mr. Bossert).

32. *Full Video: Sean Hannity Interviews Trump on Biden, Russia Probe, FISA Abuse, Comey*, Real Clear Politics (Apr. 26, 2019), https://perma.cc/3CLR-9MVA.

33. *Transcript: Fox News Interview with President Trump*, Fox News (May 6, 2019), https://perma.cc/NST6-X7WS.

34. Kenneth P. Vogel, *Rudy Giuliani Plans Ukraine Trip to Push for Inquiries That Could Help Trump*, N.Y. Times (May 9, 2019) (*Giuliani Plans Ukraine Trip*), https://perma.cc/SC6J-4PL9.

35. *Id.* (quoting Mr. Giuliani).

36. *Id.* (quoting Mr. Giuliani).

37. Lev Parnas Production to the House Permanent Select Comm. on Intelligence at 28 (Jan. 14, 2019), https://perma.cc/PWX4-LEMS (letter from Rudolph Giuliani to Volodymyr Zelensky, President-elect of Ukraine (May 10, 2019)).

38. *See* Andrew Restuccia & Darren Samuelsohn, *Giuliani Cancels Ukraine Trip amid Political Meddling Charges*, Politico (May 11, 2019), https://perma.cc/V5S8-2FV4.

39. *Giuliani: I Didn't Go to Ukraine to Start an Investigation, There Already Was One*, Fox News (May 11, 2019), https://perma.cc/HT7V-2ZYA.

40. Williams Dep. Tr. at 37; Volker Interview Tr. at 288–90; Vindman Dep. Tr. at 125–27.

41. Volker Interview Tr. at 29–30, 304.

42. *Id.* at 305.

43. *Id.* at 304; Transcript, Interview of Gordon Sondland Before the H. Permanent Select Comm. on Intelligence 337 (Oct. 17, 2019) (Sondland Dep. Tr.).

44. Sondland Dep. Tr. at 62, 69–70; Volker Interview Tr. at 305; Transcript, *Impeachment Inquiry: Ambassador Kurt Volker and Timothy Morrison: Hearing Before the H. Permanent Select Comm. on Intelligence*, 116th Cong. 39–40 (Nov. 19, 2019) (Volker-Morrison Hearing Tr.).

45. Sondland Dep. Tr. at 90.

46. *See id.* at 77–78; Volker-Morrison Hearing Tr. at 17, 19; *see also* Timothy Puko & Rebecca Ballhaus, *Rick Perry Called Rudy Giuliani at Trump's Direction on Ukraine Concerns*, Wall Street J. (Oct. 16, 2019) (*Rick Perry Called Rudy Giuliani*), https://perma.cc/E4F2-9U23.25.

47. *Giuliani Plans Ukraine Trip*, https://perma.cc/SC6J-4PL9.

48. *See, e.g.*, Transcript, *Impeachment Inquiry: Ambassador Sondland: Hearing Before the H. Permanent Select Comm. on Intelligence*, 116th Cong. 18 (Nov. 20, 2019) (Sondland Hearing Tr.) (''[A]s I testified previously . . . Mr. Giuliani's requests were a quid pro quo for arranging a White House visit for President Zelensky''); *id.* at 34, 42–43.

49. Transcript, Deposition of William B. Taylor Before the H. Permanent Select Comm. on Intelligence (Oct. 22, 2019) (Taylor Dep. Tr.).

50. Taylor-Kent Hearing Tr. at 34–36.

51. Sondland Dep. Tr. at 240.

52. Hill Dep. Tr. at 127 (Dr. Hill, quoting Mr. Bolton).

53. *See* Taylor Dep. Tr. at 20, 23, 27–28, 31, 33–34; Transcript, Deposition of Ambassador Marie ''Masha'' Yovanovitch Before the H. Permanent Select Comm. on Intelligence 16, 18, 73, 302 (Oct. 11, 2019) (Yovanovitch Dep. Tr.); *see also Conflilct in Ukraine Enters Its Fourth Year with No End in Sight*, Office of the U.N. High Comm'r for Human Rights (June 13, 2017), https://perma.cc/K9N8-F22E.

54. Taylor-Kent Hearing Tr. at 28.

55. Volker Interview Tr. at 329; *see* Yovanovitch Hearing Tr. at 17–18; Volker-Morrison Hearing Tr. at 11.

56. Transcript, Deposition of Catherine Croft Before the H. Permanent Select Comm. on Intelligence 16 (Oct. 30, 2019) (Croft Dep. Tr.).

57. Kent Dep. Tr. at 338–39.

58. Viacheslav Shramovych, *Ukraine's Deadliest Day: The Battle of Ilovaisk, August 2014*, BBC News (Aug. 29, 2019), https://perma.cc/6B2F-B72W.

59. *See* Transcript, Deposition of Laura Katherine Cooper Before the H. Permanent Select Comm. on Intelligence 16, 38, 98 (Oct. 23, 2019) (Cooper Dep. Tr.); Vindman Dep. Tr. at 41, 57, 165; Transcript, Deposition of Mark Sandy Before the H. Permanent Select Comm. on Intelligence 59–60 (Nov. 16, 2019) (Sandy Dep. Tr.); Taylor-Kent Hearing Tr. at 29–30; Taylor Dep. Tr. at 38, 40–41, 171, 217–18, 281–82; Letter from Senators Jeanne Shaheen et al. to Acting White House Chief of Staff Mick Mulvaney (Sept. 3, 2019) (Sept. 3 Letter), https://perma.cc/4TU8-H7UR; Letter from Senator Christopher Murphy to Chairman Adam B. Schiff, House Permanent Select Comm. on Intelligence, and Acting Chairwoman Carolyn Maloney, House Comm. on Oversight and Reform (Nov. 19, 2019) (Nov. 19 Letter), https://perma.cc/4BDP-2SRJ.

60. Cory Welt, Cong. Research Serv., R45008, *Ukraine: Background, Conflict with Russia, and U.S. Policy* 30 (Sept. 19, 2019), https://perma.cc/4HCR-VKA5; *see also* Hill-Holmes Hearing Tr. at 97 (testimony of David Holmes) (''The United States has provided combined civilian and military assistance to Ukraine since 2014 of about $3 billion,

plus two $1 billion—three $1 billion loan guarantees. That is not—those get paid back largely. So just over $3 billion.'').

61. Taylor Dep. Tr. at 153.

62. Yovanovitch Hearing Tr. at 18.

63. Volker-Morrison Hearing Tr. at 11.

64. Iain King, *Not Contributing Enough? A Summary of European Military and Development Assistance to Ukraine Since 2014*, Ctr. for Strategic & Int'l Stud. (Sept. 26, 2019), https://perma.cc/FF6F-Q9MX.

65. *EU-Ukraine Relations—Factsheet*, European External Action Serv. (Sept. 30, 2019), https://perma.cc/4YKE-T2WT.

66. *Id.*

67. *See EU Aid Explorer: Donors*, European Comm'n, https://perma.cc/79H6-AFHY.

68. *U.S. Foreign Aid by Country*, USAID, https://perma.cc/9YK2-9BKJ (last updated Sept. 23, 2019) (Ukraine data for fiscal year 2017 and fiscal year 2018).

69. Transcript, *Impeachment Inquiry: Ms. Laura Cooper and Mr. David Hale: Hearing Before the H. Permanent Select Comm. on Intelligence*, 116th Cong. 22–23 (Nov. 20, 2019) (Cooper-Hale Hearing Tr.); Cooper Dep. Tr. at 95–96.

70. Department of Defense and Labor, Health and Human Services, and Education Appropriations Act, 2019 and Continuing Appropriations Act, 2019, Pub. L. No. 115–245, § 9013 (2018); Consolidated Appropriations Act, 2019, Pub. L. No. 116–6, § 7046(a)(2) (2019); *Conference Report to Accompany H.J. Res. 31*, H. Rep. No. 116–9, at 869 (2019) (allocating $115,000,000 in assistance to Ukraine for the Foreign Military Financing Program); Aaron Mehta, *U.S. State Department Clears Ukraine Security Assistance Funding. Is the Pentagon Next?*, Def. News (Sept. 12, 2019), https://perma.cc/723T-9XUN (noting that approximately $26 million rolled over from fiscal year 2018).

71. Press Release, Dep't of Def., DOD Announces $250M to Ukraine, (June 18, 2019) (DOD Announces $250M to Ukraine), https://perma.cc/U4HX-ZKXP.

72. Pub. L. No. 115–245, § 9013.

73. DOD Announces $250M to Ukraine, https://perma.cc/U4HX-ZKXP. DOD had certified in May 2019 that Ukraine satisfied all anti-corruption standards needed to receive the Congressionally appropriated military aid. *See* Letter from John C. Rood, Under Sec'y of Def. for Pol'y, Dep't of Def., to Chairman Eliot L. Engel, House Comm. on Foreign Affairs (May 23, 2019), https://perma.cc/68FS-ZXZ6 (''Ukraine has taken substantial actions to make defense institutional reforms for the purposes of decreasing corruption. . . . [N]ow that this defense institution reform has occurred, we will use the authority provided . . . to support programs in Ukraine further.'').

74. Sandy Dep. Tr. at 24–25; Cooper Dep. Tr. at 33–34.

75. Sandy Dep. Tr. at 24–28.

76. Eric Lipton et al., *Behind the Ukraine Aid Freeze: 84 Days of Conflict and Confusion*, N.Y. Times (Dec. 29, 2019) (*Behind the Ukraine Aid Freeze*), https://perma.cc/TA5J-NJFX.

77. *See, e.g.*, Cooper Dep. Tr. at 13, 16, 32, 46, 60–62, 64–65; Taylor Dep. Tr. at 28, 132, 170.

78. *See* Nov. 19 Letter, https://perma.cc/4BDP-2SRJ; Sept. 3 Letter, https://perma.cc/4TU8-H7UR.

79. Williams Dep. Tr. at 54; Croft Dep. Tr. at 15; Kent Dep. Tr. at 303–305; Transcript, Deposition of Ambassador David Maclain Hale Before the H. Permanent Select Comm. on Intelligence 81 (Oct. 31, 2019) (Hale Dep. Tr.); Sandy Dep. Tr. at 99; Vindman Dep. Tr. at 181–82; Transcript, Deposition of Ambassador Tim Morrison Before the H. Permanent Select Comm. on Intelligence 264 (Nov. 6, 2019) (Morrison Dep. Tr.).

80. Cooper-Hale Hearing Tr. at 14; Vindman Dep. Tr. at 178–79; *see also Stalled Ukraine Military Aid Concerned Members of Congress for Months*, CNN (Sept. 30, 2019), https://perma.cc/5CHF-HFKJ; Sandy Dep. Tr. at 38–39 (describing July 12 email from White House to OMB stating ''that the President is directing a hold on military support funding for Ukraine.'').

81. *See* Sandy Dep. Tr. at 90; Hill Dep. Tr. at 225; Taylor-Kent Hearing Tr. at 35; Vindman Dep. Tr. at 181; Holmes Dep. Tr. at 153–54.

82. Taylor-Kent Hearing Tr. at 35; Hill Dep. Tr. at 225.

83. Email from Michael Duffey, Assoc. Dir. for Nat'l Sec. Programs, Office of Mgmt. & Budget, to David Norquist et al. (July 25, 2019, 11:04 AM), https://perma.cc/PG93-3M6B.

84. *Id.*

85. Kent Dep. Tr. at 303, 307, 311; Taylor-Kent Hearing Tr. at 36; Vindman Dep. Tr. at 182–85, Cooper Dep. Tr. at 45.

86. Kent Dep. Tr. at 303–305; Hale Dep. Tr. at 81.

87. Croft Dep. Tr. at 15; Hale Dep. Tr. at 105; Holmes Dep. Tr. at 21; Kent Dep. Tr. at 304, 310; Cooper Dep. Tr. at 44–45; Sandy Dep. Tr. at 91, 97; Morrison Dep. Tr. at 162–63. Mr. Morrison testified that, during a Deputies Committee meeting on July 26, OMB stated that the ''President was concerned about corruption in Ukraine, and he wanted to make sure that Ukraine was doing enough to manage that corruption.'' Morrison Dep. Tr. at 165. Mr. Morrison did not testify that concerns about Europe's contributions were raised during this meeting. In addition, Mark Sandy testified that, as of July 26, despite OMB's own statement, senior OMB officials were unaware of the reason for the hold at that time. See Sandy Dep. Tr. at 55–56.

88. Sandy Dep. Tr. at 99; Vindman Dep. Tr. at 181–82; Kent Dep. Tr. at 305; Morrison Dep. Tr. at 264.

89. Morrison Dep. Tr. at 163; Cooper Dep. Tr. at 47–48. For example, Deputy Assistant Secretary of Defense Laura Cooper testified that, during an interagency meeting on July 26 involving senior leadership from the State Department and DOD and officials from the National Security Council, ''immediately deputies began to raise concerns about how this could be done in a legal fashion'' and there ''was a sense that there was not an available mechanism to simply not spend money'' that already had been notified to Congress or earmarked for Ukraine. Cooper Dep. Tr. at 47–48.

90. Sandy Dep. Tr. at 42–43.

91. Cooper-Hale Hearing Tr. at 75–76.

92. Cooper Dep. Tr. at 91.

93. Sondland Dep. Tr. at 338–39.

94. Sandy Dep. Tr. at 149–55.

95. Josh Dawsey et al., *White House Review Turns Up Emails Showing Extensive Efforts to Justify Trump's Decision to Block Ukraine Military Aid*, Wash. Post (Nov. 24, 2019), https://perma.cc/99TX-5KFE. Because the President obstructed the House's investigation, the House was unable to obtain documents to confirm this reporting.

96. See Sandy Dep. Tr. at 75; Kate Brannen, *Exclusive: Unredacted Ukraine Documents Reveal Extent of Pentagon's Legal Concerns*, Just Security (Jan. 2, 2020) (Just Security Report), https://perma.cc/VA6U-RYPK (reporting about review of unredacted copies of OMB documents that were produced to the Center for Public Integrity in redacted form).

97. Matter of Office of Mgmt. & Budget—Withholding of Ukraine Sec. Assistance, B–331564 (Comp. Gen. Jan. 16, 2020), https://perma.cc/5CDX-XLX6.

98. *See Behind the Ukraine Aid Freeze*, https://perma.cc/TA5J-NJFX.

99. *See* Just Security Report, https://perma.cc/VA6U-RYPK (quoting email from Michael Duffey to Elaine McCusker).

100. *See, e.g.*, Sandy Dep. Tr. at 133 (''[W]ere we ever given any reason for the hold? And I would say only in September did we receive an explanation that the hold—that the President's direction reflected his concerns about the contributions from other countries for Ukraine.''); Cooper Dep. Tr. at 93–94; Vindman Dep. Tr. at 181–82; Williams Dep. at 91–92.

101. Taylor Dep. Tr. at 24–25 (''In late June, one of the goals of both channels was to facilitate a visit by President Zelensky to the White House for a meeting with President Trump, which President Trump had promised in his congratulatory letter of May 29. [The] Ukrainians were clearly eager for the meeting to happen. During a conference call with Ambassador Volker, Acting Assistant Secretary of State for European and Eurasian Affairs Phil Reeker, Secretary Perry, Ambassador Sondland, and Counselor of the U.S. Department of State Ulrich Brechbuhl on June 18, it was clear that a meeting between the two presidents was an agreed-on—agreed-upon goal.'').

102. Volker Interview Tr. at 59, 328.

103. *Id.*

104. Taylor Dep. Tr. at 26.

105. Sondland Hearing Tr. at 26.

106. *Id.* at 43.

107. Kurt Volker Text Messages Received by the House Committees at KV00000027 (Oct. 2, 2019) (Volker Text Messages), https://perma.cc/CG7Y-FHXZ.

108. Taylor Dep. Tr. at 65–66.

109. Volker-Morrison Hearing Tr. at 70.

110. Kent Dep. Tr. at 246–47.

111. Hill Dep. Tr. at 67.

112. *Id.* at 69.

113. Vindman Dep. Tr. at 64.

114. *Id.* at 69–70; Vindman Dep. Tr. at 31; *see* Hill-Holmes Hearing Tr. at 92.

115. Hill Dep. Tr. at 70–72.

116. *Id.* at 139 (''I told him exactly, you know, what had transpired and that Ambassador Sondland had basically indicated that there was an agreement with the Chief of Staff that they would have a White House meeting or, you know, a Presidential meeting if the Ukrainians started up these investigations again.''); Vindman Dep. Tr. at 37 (''Sir, I think I—I mean, the top line I just offered, I'll restate it, which is that Mr. Sondland asked for investigations, for these investigations into Bidens and Burisma. I actually recall having that particular conversation. Mr. Eisenberg doesn't really work on this issue, so I had to go a little bit into the back story of what these investigations were, and that I expressed concerns and thought it was inappropriate.''). A third NSC official, P. Wells Griffith, also reported the July 10 meeting to the NSC Legal Advisor, but he refused to comply with a subpoena and did not testify before the House.

117. Volker Text Messages at KV00000018.

118. *See, e.g.*, *id.* at KV00000037; Ambassador Gordon D. Sondland, *Opening Statement Before the U.S. House of Representatives Permanent Select Comm. on Intelligence* 15 (Nov. 20, 2019) (Sondland Opening Statement), https://perma.cc/Z2W6–A9HS (''As I communicated to the team, I told President Zelensky in advance that assurances to run a fully transparent investigation and turn over every stone were necessary in his call with President Trump.'').

119. Volker Text Messages at KV00000037.

120. Taylor-Kent Hearing Tr. at 37–38 (Ambassador Taylor quoting Ambassador Sondland).

121. Sondland Hearing Tr. at 27; Sondland Opening Statement at 21, Ex. 4.

122. Sondland Opening Statement at 21, Ex. 4.

123. Sondland Hearing Tr. at 27.

124. Taylor Dep. Tr. at 30.

125. Volker Text Messages at KV00000037.

126 *See, e.g., id.* at KV00000019; July 25 Memorandum at 3–4, https://perma.cc/8JRD-6K9V.

127. *See, e.g., Washington Post–ABC News Poll, June 28–July 1, 2019*, Wash. Post (July 11, 2019), https://perma.cc/NS4B-PRWC.

128. Sondland Hearing Tr. at 53–54.

129. Volker Text Messages at KV00000019.

130. Sondland Hearing Tr. at 53–55.

131. *See* July 25 Memorandum at 2, https://perma.cc/8JRD-6K9V.

132. *Id.* at 3–4. President Trump continues to embrace this call as both ''routine'' and ''perfect.'' *See, e.g., Remarks by President Trump upon Arriving at the U.N. General Assembly*, White House (Sept. 24, 2019) (Trump Sept. 24 Remarks), https://perma.cc/ZQ4P-FGT4; Colby Itkowitz, *Trump Defends Call with Ukrainian President, Calling It ''Perfectly Fine and Routine,''* Wash. Post (Sept. 21, 2019), https://perma.cc/T3ZM-GKLB.

133. *See* July 25 Memorandum at 4–5, https://perma.cc/8JRD-6K9V.

134. *Id.* at 4.

135. *Id.*

136. *Id.* at 3, 5.

137. *See id.* at 2.

138. *See generally id.* Mr. Trump had previously engaged in efforts to cut aid to anti-corruption programs in Ukraine and other foreign nations. *See* Erica Werner, *Trump Administration Sought Billions of Dollars in Cuts to Programs Aimed at Fighting Corruption in Ukraine and Elsewhere*, Wash. Post (Oct. 23, 2019), https://perma.cc/R9AJ-AZ65.

139. Transcript, *Impeachment Inquiry: Ms. Jennifer Williams and Lieutenant Colonel Alexander Vindman: Hearing Before the H. Permanent Select Comm. on Intelligence*, 116th Cong. 19 (Nov. 19, 2019) (Vindman-Williams Hearing Tr.).

140. *Id.* at 34; Williams Dep. Tr. at 148–49.

141. Vindman-Williams Hearing Tr. at 15.

142. Morrison Dep. Tr. at 41.

143 *Id.* at 43.

144. *Id.* at 43, 47–50, 52; *see also* Vindman Dep. Tr. at 49–51, 119–22.

145. Holmes Dep. Tr. at 24.

146. Sondland Hearing Tr. at 26–27.

147. Holmes Dep. Tr. at 25–26.

148. *See, e.g.*, Cooper-Hale Hearing Tr. at 13–14; Vindman Dep. Tr. at 222; Sandy Dep. Tr. at 59–60.

149. Cooper-Hale Hearing Tr. at 13–14.

150. Croft Dep. Tr. at 86–88.

151. Vindman Dep. Tr. at 222.

152. Andrew E. Kramer, *Ukraine Knew of Aid Freeze in July, Says Ex-Top Official in Kyiv*, N.Y. Times (Dec. 3, 2019), https://perma.cc/SD98-VPRN.

153. *Id.* (quoting Ms. Zerkal).

154. *Id.* (quoting Ms. Zerkal's summary of a statement by Mr. Yermak).

155. Volker Text Messages at KV00000019.

156. Sondland Opening Statement at 22, Ex. 7; Sondland Hearing Tr. at 28, 102.

157. Volker Text Messages at KV00000020.

158. Volker Interview Tr. at 113.

159. Sondland Hearing Tr. at 18.

160. Volker Text Messages at KV00000023. Ambassador Volker claimed that he ''stopped pursuing'' the statement from the Ukrainians around this time because of concerns raised by Mr. Yermak. Ambassador Kurt Volker, *Testimony Before the House of Representatives Committee on Foreign Affairs, Permanent Select Committee on Intelligence, and Committee on Oversight* 8 (Oct. 3, 2019) (Volker Opening Statement), https://perma.cc/9DDN-2WFW; Volker Interview Tr. at 44–45, 199; Volker-Morrison Hearing Tr. at 21.

161. *See, e.g.*, Sondland Opening Statement at 16 (''[M]y goal, at the time, was to do what was necessary to get the aid released, to break the logjam. I believed that the public statement we had been discussing for weeks was essential to advancing that goal.'').

162. Hale Dep. Tr. at 81; Vindman Dep. Tr. at 184.

163. Sandy Dep. Tr. at 59–60.

164. Sondland Hearing Tr. at 56–58; *see also* Taylor Dep. Tr. at 190 (Ambassador Taylor's ''clear understanding'' was that ''security assistance money would not come until the [Ukrainian] President committed to pursue the investigation''); Hill-Holmes Hearing Tr. at 32 (Mr. Holmes's ''clear impression was that the security assistance hold was likely intended by the President either as an expression of dissatisfaction with the Ukrainians, who had not yet agreed to the Burisma/Biden investigation, or as an effort to increase the pressure on them to do so.'').

165. Sondland Opening Statement at 23.

166. Caitlin Emma & Connor O'Brien, *Trump Holds Up Ukraine Military Aid Meant to Confront Russia*, Politico (Aug. 28, 2019), https://perma.cc/54RZ-Q6NJ.104.

167. Volker Text Messages at KV00000020; Volker Interview Tr. at 80–81; Taylor Dep. Tr. at 34.

168. Taylor Dep. Tr. at 137–38.

169. Roman Olearchyk, *Cleaning Up Ukraine in the Shadow of Trump*, Fin. Times (Nov. 28, 2019), https://perma.cc/YMX9-XJ2B (quoting current Ukrainian Prosecutor General Ruslan Ryaboshapka).

170. *Behind the Ukraine Aid Freeze*, https://perma.cc/TA5J-NJFX.

171. *Readout of Vice President Mike Pence's Meeting with Ukrainian President Volodymyr Zelensky*, White House (Sep. 1, 2019), https://perma.cc/K2PH-YPVK; Taylor-Kent Hearing Tr. at 41.

172. Sondland Hearing Tr. at 30.

173. *Id.* at 38.

174. Williams Dep. Tr. at 81.

175. *Id.* at 82.

176. *Id.* at 82–83.

177. *Id.* at 94.

178. Sondland Hearing Tr. at 31.

179. Morrison Dep. Tr. at 134.

180. *Id.* at 182–83.

181. Taylor-Kent Hearing Tr. at 42.

182. Volker Text Messages at KV00000039.

183. Taylor-Kent Hearing Tr. at 42.

184. *Id.; see also* Taylor Dep. Tr. at 144.

185. In Ambassador Sondland's testimony, he was not clear on whether he had one or two conversations with the President in which the subject of a quid pro quo came up, or on precisely which date such conversations took place during the period of September 6 through 9. Regardless of the date, Ambassador Sondland did not contest telling both Mr. Morrison and Ambassador Taylor—both of whom took contemporaneous notes—of a conversation he had with the President that reaffirmed Ambassador Sondland's understanding that President Zelensky had to make a public statement announcing the investigations in order to obtain the White House meeting and security assistance. See Sondland Hearing Tr. at 109. Both documentary evidence and testimony confirmed that the conversation described by Mr. Morrison and Ambassador Taylor occurred on September 7. *See, e.g.*, Morrison Dep. Tr. at 144–45; Taylor Dep. Tr. at 38; Volker Text Messages at KV00000053 (Sondland text message to Volker and Taylor on September 8 stating, ''Guys, multiple convos with Ze, Potus. Lets talk'').

186. Morrison Dep. Tr. at 190–91.

187. *Id.* at 145.

188. *Id.* at 223, 238.

189. Taylor-Kent Hearing Tr. at 44.

190. Sondland Hearing Tr. at 7; Taylor Dep. Tr. at 39.

191. Volker Text Messages at KV00000053.

192. Sondland Hearing Tr. at 110–11; Andrew E. Kramer, *Ukraine's Zelensky Bowed to Trump's Demands until Luck Spared Him*, N.Y. Times (Nov. 7, 2019), https://perma.cc/A5JE-N25L; Fareed Zakaria, *Zelensky Planned to Announce Trump's ''Quo'' on My Show. Here's What Happened.*, Wash. Post (Nov. 14, 2019) (*Zelensky Planned to Announce Trump's ''Quo''*), https://perma.cc/MMT7-D8XJ.

193. *Press Briefing by Acting Chief of Staff Mick Mulvaney*, White House (Oct. 17, 2019) (Oct. 17 Briefing), https://perma.cc/Q45H-EMC7 (''Q. So the demand for an investigation into the Democrats was part of the reason that he ordered to withhold funding to Ukraine? MR. MULVANEY: The look back to what happened in 2016—Q. The investigation into Democrats. MR. MULVANEY:—certainly was part of the thing that he was worried about in corruption with that nation. And that is absolutely appropriate. Q. And withholding the funding? MR. MULVANEY: Yeah. Which ultimately, then, flowed.'').

194. *Id.*

195. Volker-Morrison Hearing Tr. at 146–47 (Mr. Morrison did not follow up on the President's request to ''investigate the Bidens'' because he ''did not understand it as a policy objective''); Vindman-Williams Hearing Tr. at 119 (Mr. Vindman confirmed that he was not ''aware of any written product'' from the NSC suggesting that these investigations were ''part of the official policy of the United States''); Taylor-Kent Hearing Tr. at 179 (''Mrs. Demings[:] Was Mr. Giuliani promoting U.S. national interests or policy in Ukraine . . . ? Ambassador Taylor[:] I don't think so, ma'am. . . . Mr. Kent[:] No, he was not.'').

196. Hill-Holmes Hearing Tr. at 92.

197. Taylor-Kent Hearing Tr. at 24.

198. Volker Interview Tr. at 197.

199. Morgan Chalfant & Brett Samuels, *White House Memo Shows Trump Pressed Ukraine Leader to Look into Biden*, Hill (Sept. 25, 2019), https://perma.cc/5LHW-V4EB (quoting DOJ spokesperson Kerri Kupec).

200. Taylor Dep. Tr. at 207–209; Taylor-Kent Hearing Tr. at 158 (''[A]s we've determined, as we've discussed here on September 11th, just before any CNN discussion or interview, the hold was released, the hold on the security assistance was released.'' (quoting Ambassador Taylor)).

201. Press Release, House Permanent Select Comm. on Intelligence, Three House Committees Launch Wide-Ranging Investigation into Trump-Giuliani Ukraine Scheme (Sept. 9, 2019) (Sept. 9 Press Release), https://perma.cc/AX4Y-PWSH.

202. Letter from Chairman Eliot L. Engel, House Comm. on Foreign Affairs, et al., to Pat A. Cipollone, Counsel to the President 3–4 (Sept. 9, 2019) (Sept. 9 Letter), https://perma.cc/R2GH-TZ9P; Letter from Chairman Eliot L. Engel, House Comm. on Foreign Affairs, et al., to Michael R. Pompeo, Sec'y, Dep't of State (Sept. 9, 2019), https://perma.cc/C4W4-UBTF.

203. Vindman Dep. Tr. at 304.

204. Letter from Michael K. Atkinson, Inspector Gen. of the Intelligence Community, to Chairman Adam Schiff, House Permanent Select Comm. on Intelligence, and Ranking Member Devin Nunes, House Permanent Select Comm. on Intelligence 2 (Sept. 9, 2019), https://perma.cc/K78N-SMRR.

205. *Id.*

206. Maguire Hearing Tr. at 14, 19–24.

207. Letter from Chairman Adam B. Schiff, House Permanent Select Comm. on Intelligence, to Joseph Maguire, Acting Dir. of Nat'l Intelligence (Sept. 10, 2019), https://perma.cc/9X9V-G5ZN.

208. Transcript, *Whistleblower Disclosure: Hearing Before the H. Permanent Select Comm. on Intelligence*, 116th Cong. 110 (Sept. 26, 209) (testimony of Joseph Maguire, Acting Dir., Nat'l Intelligence) (Maguire Hearing Tr.) (''Chairman Schiff, when I received the letter from Michael Atkinson on the 26th of August, he concurrently sent a letter to the Office of White House Counsel asking the

White House counsel to control and keep any information that pertained to that phone call on the 25th.'').

209. Michael S. Schmidt et al., *Trump Knew of Whistle-Blower Complaint When He Released Aid to Ukraine*, N.Y. Times (Nov. 26, 2019), https://perma.cc/7473-YFSY.

210. *See* Morgan Philips, *Trump Administration Lifts Hold on $250M in Military Aid for Ukraine*, Fox News (Sept. 12, 2019), https://perma.cc/8ABM-XNPV.

211. *See, e.g.*, Morrison Dep. Tr. at 244; Vindman Dep. Tr. at 306; Williams Dep. Tr. at 147. Mr. Sandy testified that he was not aware of any other countries committing to provide more financial assistance to Ukraine prior to the lifting of the hold on September 11. Sandy Dep. Tr. at 180. Lt. Col. Vindman similarly confirmed that none of the ''facts on the ground'' changed before the President lifted the hold. Vindman Dep. Tr. at 306.

212. Sandy Dep. Tr. at 146–47; H. Rep. No. 116–335, at 474.

213. Continuing Appropriations Act, 2020, and Health Extenders Act of 2019, Pub. L. No. 116–59, §124 (2019).

214. Molly O'Toole & Sarah D. Wire, *Millions in Military Aid at Center of Impeachment Hasn't Reached Ukraine*, L.A. Times (Dec. 12, 2019), https://perma.cc/AR26-3KY2 (citing a DOD aide).

215. Hill-Holmes Hearing Tr. at 33; Taylor-Kent Hearing Tr. at 106–07; *see also Zelensky Planned to Announce Trump's ''Quo''*, https://perma.cc/MMT7-D8XJ.

216. Williams Dep. Tr. at 156.

217. Classified Supp'l Submission of Jennifer Williams to the House Permanent Select Comm. on Intelligence (Nov. 26, 2019) (describing additional details of the Vice President's call with President Zelensky on September 18).

218. Taylor-Kent Hearing Tr. at 106–07; Hill-Holmes Hearing Tr. at 33.

219. *Zelensky Planned to Announce Trump's ''Quo''*, https://perma.cc/MMT7-D8XJ.

220. Hill-Holmes Hearing Tr. at 46–47 (testimony of David Holmes) (''And although the hold on the security assistance may have been lifted, there were still things they wanted that they weren't getting, including a meeting with the President in the Oval Office. . . . And I think that continues to this day.'').

221. John Hudson & Anne Gearan, *Trump Meets Russia's Top Diplomat amid Scrap over Election Interference*, Wash. Post (Dec. 10, 2019), https://perma.cc/X5WC-LKT5; *see also* Philip Bump, *Trump Promised Zelensky a White House Meeting. More Than a Dozen Other Leaders Got One Instead*, Wash. Post (Dec. 13, 2019), https://perma.cc/4XSP-R3JB (compiling White House meetings involving foreign officials since April 2019).

222. *E.g.*, H. Rep. No. 116–346, at 124; *see also* Hill-Holmes Hearing Tr. at 46–47.

223. Trump Sept. 24 Remarks, https://perma.cc/ZQ4P-FGT4.

224. *Remarks by President Trump and President Zelensky of Ukraine Before Bilateral Meeting*, White House (Sept. 25, 2019) (Trump Sept. 25 Remarks), https://perma.cc/XCJ4-A67L.

225. *Trump Quotes Sondland Quoting Him: ''I Want Nothing. I Want No Quid Pro Quo.,''* CBS News (Nov. 20, 2019), https://perma.cc/X34R-QG3R.

226. *Remarks by President Trump at the Swearing-In Ceremony of Secretary of Labor Eugene Scalia*, White House (Sept. 30, 2019) (Trump Sept. 30 Remarks), https://perma.cc/R94C-5HAY.

227. *Remarks by President Trump Before Marine One Departure*, White House (Oct. 3, 2019) (Trump Oct. 3 Remarks), https://perma.cc/WM8A-NRA2.

228. *Id.*

229. *Remarks by President Trump Before Marine One Departure*, White House (Oct. 4, 2019) (Trump Oct. 4 Remarks), https://perma.cc/C78K-NMDS.

230. *Id.*

231. *See, e.g.*, Kenneth P. Vogel & Benjamin Novak, *Giuliani, Facing Scrutiny, Travels to Europe to Interview Ukrainians*, N.Y. Times (Dec. 4, 2019) (*Giuliani, Facing Scrutiny, Travels to Europe*), https://perma.cc/N28V-GPAC; Dana Bash & Michael Warren, *Giuliani Says Trump Still Supports His Dirt-Digging in Ukraine*, CNN (Dec. 17, 2019) (*Giuliani Says Trump Still Supports His Dirt-Digging*), https://perma.cc/F399–B9AY.

232. *Giuliani, Facing Scrutiny, Travels to Europe*, https://perma.cc/HZ6F-E67G; David L. Stern & Robyn Dixon, *Ukraine Lawmaker Seeking Biden Probe Meets with Giuliani in Kyiv*, Wash. Post (Dec. 5, 2019) (*Ukraine Lawmaker Seeking Biden Probe*), https://perma.cc/C3GW-RF4T; Will Sommer, *Rudy's New Ukraine Jaunt Is Freaking Out Trump's Lieutenants—and He Doesn't Care*, Daily Beast (Dec. 6, 2019) (*Rudy's New Ukraine Jaunt*), https://perma.cc/UNR9-VWFZ.

233. *Ukraine Lawmaker Seeking Biden Probe*, https://perma.cc/W3Q2-E8QY.

234. Philip Bump, *Giuliani May Be Making a Stronger Case Against Trump Than Biden*, Wash. Post (Dec. 16, 2019), https://perma.cc/7HR4-TC9W; *Rudy's New Ukraine Jaunt*, https://perma.cc/UNR9-VWFZ.

235. *Giuliani, Facing Scrutiny, Travels to Europe*, https://perma.cc/HZ6F-E67G.

236. Rudy Giuliani (@RudyGiuliani), Twitter (Dec. 5, 2019, 1:42 PM), https://perma.cc/829X-TSKJ.

237. Rebecca Ballhaus & Julie Bykowicz, *''Just Having Fun'': Giuliani Doubles Down on Ukraine Probes*, Wall Street J. (Dec. 13, 2019), https://perma.cc/5B69-2AVR.

238. David Jackson, *Trump Says Rudy Giuliani Will Give Information About Ukraine to Justice Department, Congress*, USA Today (Dec. 7, 2019), https://perma.cc/7RXJ-JG7F.

239. *Giuliani Says Trump Still Supports His Dirt-Digging*, https://perma.cc/F399-B9AY; *see also* Asawin Suebsaeng & Erin Banco, *Trump Tells Rudy to Keep Pushing the Biden Conspiracies*, Daily Beast (Dec. 18, 2019), https://perma.cc/S5K6-K8J9 (quoting source who reported that President Trump told Mr. Giuliani to ''keep at it'').

240. Volker-Morrison Hearing Tr. at 139; *see* Kent Dep. Tr. at 329.

241. Kent Dep. Tr. at 329.

242. Hill-Holmes Hearing Tr. at 32.

243. Mueller Report, Vol. I at 1–2.

244. Mueller Report, Vol. I at 49 (quoting then-candidate Donald Trump).

245. *Id.* Beginning in early November 2019, while the House's impeachment inquiry was ongoing, Russian military hackers reportedly hacked Burisma's server using ''strikingly similar'' tactics to those used to hack the DNC in 2016. *See* Nicole Perlroth & Matthew Rosenberg, *Russians Hacked Ukrainian Gas Company at Center of Impeachment*, N.Y. Times (Jan. 13, 2019), https://perma.cc/5NSA-BELW.

246. Mueller Report, Vol. I at 6.

247. *Id.*, Vol. I at 58.

248. *See* Aaron Blake, *The Trump Team's History of Flirting with—and Promoting—Now-Accused-Criminal Julian Assange*, Wash. Post (Nov. 16, 2018), https://perma.cc/UL9R-YQN.

249. Mueller Report, Vol. I at 54; *id.*, Vol. II at 18.

250. Judd Legum, *Trump Mentioned WikiLeaks 164 Times in Last Month of Election, Now Claims It Didn't Impact One Voter*, ThinkProgress (Jan. 8, 2017), https://perma.cc/5J46-Y8RG.

251. Mueller Report, Vol. I at 110–20.

252. *Id.*, Vol. I at 83–84, 87–89.

253. *Transcript: ABC News' George Stephanopoulos' Exclusive Interview with President Trump*, ABC News (June 16, 2019), https://perma.cc/C8DS-637R.

254. *Id.*

255. *Id.*

256. Sandy Dep. Tr. at 37–39; Morrison Dep. Tr. at 161.

257. *See* Press Release, House Permanent Select Comm. on Intelligence, House Judiciary and House Intelligence Committees to Hold Open Hearing with Special Counsel Robert Mueller (July 19, 2019), https://perma.cc/6TZZ-BJKS.

258. The July 25 Memorandum at 3, https://perma.cc/8JRD-6K9V.

259. U.S. Const., Art. I, §2, cl. 5.

260. *See, e.g.*, *Resolution Recommending That the House of Representatives Find William P. Barr, Attorney General, U.S. Department of Justice, in Contempt of Congress for Refusal to Comply with a Subpoena Duly Issued by the Committee on the Judiciary*, H. Rep. No. 116–105, at 13 (June 6, 2019) (''The purposes of this investigation include . . . considering whether any of the conduct described in the Special Counsel's Report warrants the Committee in taking any further steps under Congress' Article I powers. That includes whether to approve articles of impeachment with respect to the President[.]''); *Directing Certain Committees to Continue Their Ongoing Investigations as Part of the Existing House of Representatives Inquiry into Whether Sufficient Grounds Exist for the House of Representatives to Exercise its Constitutional Power to Impeach Donald John Trump, President of the United States of America, and for Other Purposes*, H. Rep. No. 116–266, at 4 (Oct. 2019).

261. Sept. 9 Press Release, https://perma.cc/AX4Y-PWSH.

262. Press Release, Speaker of the House, Pelosi Remarks Announcing Impeachment Inquiry (Sept. 24, 2019), https://perma.cc/6EQM-34PT.

263. *Id.*

264. H. Res. 660, 116th Cong. (2019).

265. *Compare* 165 Cong. Rec. E1357 (2019) (Impeachment Inquiry Procedures in the Committee on the Judiciary Pursuant to H. Res. 660), *with Investigatory Powers of the Committee on the Judiciary with Respect to Its Impeachment Inquiry*, H. Rep. No. 105–795 (1998), and *with Impeachment Inquiry: Hearings Before the H. Comm. on the Judiciary, Book III*, 93d Cong. 2249–52 (1974); *see also* H. Rep. No. 116–346, at 17–25.

266. H. Rep. No. 116–346, at 22–24.

267. *Remarks by President Trump Before Marine One Departure*, White House (Apr. 24, 2019), https://perma.cc/W7VZ-FZ3T.

268. *Remarks by President Trump at Turning Point USA's Teen Student Action Summit 2019*, White House (July 23, 2019), https://perma.cc/EFF6-9BE7.

269. Sept. 9 Letter, https://perma.cc/R2GH-TZ9P.

270. Letter from Chairman Eliot L. Engel, House Comm. on Foreign Affairs, et al., to Pat A. Cipollone, Counsel to the President 3 (Sept. 24, 2019), https://perma.cc/SCG3-6UEW.

271. *Remarks by President Trump upon Air Force One Arrival*, White House (Sept. 26, 2019), https://perma.cc/5RWE-8VTB.

272. Letter from Chairman Elijah E. Cummings, House Comm. on Oversight and Reform, et al., to John Michael Mulvaney, Acting Chief of Staff to the President (Oct. 4, 2019) (Oct. 4 Letter), https://perma.cc/6RXE-WER8.

273. Letter from Pat A. Cipollone, Counsel to the President, to Speaker Nancy Pelosi, House of Representatives, et al. 7 (Oct. 8, 2019), https://perma.cc/5P57-773X (Oct. 8 Cipollone Letter).

274. *Id.* at 1–3, 6.

275. @realDonaldTrump (Oct. 1, 2019, 4:41 PM), https://perma.cc/UX8Z-BFKL.

276. Letter from President Donald J. Trump to Speaker Nancy Pelosi, House of Representatives (Dec. 17, 2019), https://perma.cc/MY49-HRXH.

277. *Id.*
278. Oct. 8 Cipollone Letter at 4.
279. Exclusion of Agency Counsel from Congressional Depositions in the Impeachment Context, 43 O.L.C. *1 (Nov. 1, 2019), https://perma.cc/T2PH-KC9V (emphasis added).
280. *See, e.g.*, Trump Sept. 25 Remarks, https://perma.cc/XCJ4-A67L; Trump Sept. 30 Remarks, https://perma.cc/R94C-5HAY; *Remarks by President Trump and President Niinistö of the Republic of Finland Before Bilateral Meeting*, White House (Oct. 2, 2019), https://perma.cc/FN4D-6D8W; Trump Oct. 3 Remarks, https://perma.cc/WM8A-NRA2; Trump Oct. 4 Remarks, https://perma.cc/C78K-NMDS; @realDonaldTrump (Nov. 10, 2019, 11:43 AM), https://perma.cc/F9XH-48Z2; *id.* (Dec. 4, 2019, 7:50 PM), https://perma.cc/Q4VY-T3CN; *id.*, https://perma.cc/3WCM-AQJG.
281. *Rick Perry Called Rudy Giuliani*, https://perma.cc/S2ED-AUPR.
282. *Id.* (quoting Secretary Rick Perry).
283. Oct. 17 Briefing, https://perma.cc/Q45H-EMC7.
284. H. Rep. No. 116–346, at 11 (''On December 3, 2019, in consultation with the Committees on Oversight and Reform and Foreign Affairs, HPSCI released and voted to adopt a report of nearly 300 pages detailing its extensive findings about the President's abuse of his office and obstruction of Congress.'').
285. *The Impeachment Inquiry into President Donald J. Trump: Constitutional Grounds for Presidential Impeachment: Hearing Before the H. Comm. on the Judiciary*, 116th Cong. (Dec. 4, 2019); *The Impeachment Inquiry into President Donald J. Trump: Presentations from H. Permanent Select Comm. on Intelligence and H. Comm. on the Judiciary Before the H. Comm. on the Judiciary*, 116th Cong. (Dec. 9, 2019).
286. *See, e.g.*, Letter from President Donald J. Trump to Speaker Nancy Pelosi, U.S. House of Representatives (Dec. 17, 2019), https://perma.cc/Y6X4-TTPR.
287. Katie Rogers, *At Louisiana Rally, Trump Lashes Out at Impeachment Inquiry and Pelosi*, N.Y. TIMES (Oct. 11, 2019), https://perma.cc/RX9Z-DQHK.
288. *See e.g.*, Danny Cevallos, *Trump Tweeted as Marie Yovanovitch Testified: Was It Witness Tampering?*, NBC News (Nov. 16, 2019), https://perma.cc/RG5N-EQYN; @realDonaldTrump (Sept. 29, 2019, 3:53 PM), https://perma.cc/9C3P-E437; Trump War Room—Text FIGHT to 88022 (@TrumpWarRoom) (Dec. 26, 2019, 1:50 PM), https://perma.cc/M5H7-B4VS (retweeted by @realDonaldTrump on Dec. 26, 2019).
289. H. Res. 755, 116th Cong (2019).
290. See H. Rep. No. 116–335, at 180–92.
291. Oct. 4 Letter, https://perma.cc/6RXE-WER8; Letter from Chairman Eliot L. Engel, House Comm. on Foreign Affairs, et al., to Vice President Michael R. Pence (Oct. 4, 2019), https://perma.cc/E6TR-5N5F; Letter from Chairman Adam B. Schiff, House Permanent Select Comm. on Intelligence, et al., to Russell T. Vought, Acting Dir., Office of Mgmt. & Budget (Oct. 7, 2019), https://perma.cc/2HBV-2LNB; Letter from Chairman Eliot L. Engel, House Comm. on Foreign Affairs, et al., to Michael R. Pompeo, Sec'y, Dep't of State (Sept. 27, 2019), https://perma.cc/8N7L-VSDR; Letter from Chairman Adam B. Schiff, House Permanent Select Comm. on Intelligence, et al., to Mark Esper, Sec'y, Dep't of Def. (Oct. 7, 2019), https://perma.cc/LMU8-XWE9; Letter from Chairman Eliot L. Engel, House Comm. on Foreign Affairs, et al., to Rick Perry, Sec'y, Dep't of Energy (Oct. 10, 2019), https://perma.cc/586S-AR8A.
292. Letter from Matthew E. Morgan, Counsel to the Vice President, to Chairman Elijah E. Cummings, House Comm. on Oversight and Reform, et al. (Oct. 15, 2019), https://perma.cc/L6LD-C4YM.
293. Letter from Jason Yaworske, Assoc. Dir. for Legislative Affairs, Office of Mgmt. & Budget, to Chairman Adam B. Schiff, House Permanent Select Comm. on Intelligence (Oct. 15, 2019), https://perma.cc/AL7W-YBLR; Letter from Robert R. Hood, Assistant Sec'y of Def. for Legislative Affairs, Dep't of Def., to Chairman Adam B. Schiff, House Permanent Select Comm. on Intelligence, et al. (Oct. 15, 2019), https://perma.cc/79ZG-ASGM.
294. *See, e.g.*, Vindman-Williams Hearing Tr. at 31–32 (briefing materials for President Trump's call with President Zelensky on July 25 prepared by Lt. Col. Vindman, Director for Ukraine at the NSC); Vindman Dep. Tr. at 53 and Morrison Dep. Tr. at 19–20 (notes relating to the July 25 call taken by Lt. Col. Vindman and Mr. Morrison, the former Senior Director for Europe and Russia on the NSC); Vindman Dep. Tr. at 186–87 and Morrison Dep. Tr. at 166–67 (an August 15 ''Presidential decision memo'' prepared by Lt. Col. Vindman and approved by Mr. Morrison conveying ''the consensus views from the entire deputies small group'' that ''the security assistance be released''); Cooper Dep. Tr. at 42–43 (NSC staff summaries of conclusions from meetings at the principal, deputy, or sub-deputy level relating to Ukraine, including military assistance); Sondland Hearing Tr. at 78–79 (call records between President Trump and Ambassador Sondland,); Vindman Dep. Tr. at 36–37 (NSC Legal Advisor Eisenberg's notes and correspondence relating to discussions with Lt. Col. Vindman regarding the July 10 meetings in which Ambassador Sondland requested investigations in exchange for a White House meeting); Holmes Dep. Tr. at 31 (the memorandum of conversation from President Trump's meeting in New York with President Zelensky on September 25); Sondland Opening Statement (emails and other messages between Ambassador Sondland and senior White House officials, including Acting Chief of Staff Mulvaney, Senior Advisor to the Chief of Staff Blair, and then-National Security Advisor Bolton, among other high-level Trump Administration officials).
295. *See* H. Rep. No. 116–335, at 180–244.
296. Vindman Dep. Tr. at 186–87; Morrison Dep. Tr. at 166–67; *see also, e.g.*, Sandy Dep. Tr. at 58–60 (describing an OMB memorandum prepared in August that recommended removing the hold).
297. Taylor Dep. Tr. at 33–34, 45–46 (describing August 27 cable to Secretary Pompeo, WhatsApp messages with Ukrainian and American officials, and notes); Volker Dep. Tr. at 20 (describing State Department's possession of substantial paper trail of correspondence concerning meetings with Ukraine); Yovanovitch Dep. Tr. at 61 (describing classified email to Under Secretary Hale); *id.* at 197–200 (describing a dispute between George Kent and the State Department pertaining to subpoenaed documents).
298. *See, e.g.*, *State Department Releases Ukraine Documents to American Oversight*, American Oversight (Nov. 22, 2019), https://perma.cc/N7K2–D7G3; Joint Status Report at 1, American Oversight v. Dep't of State, No. 19–cv–2934 (D.D.C. Nov. 25, 2019), ECF No. 19.
299. For example, documents produced by OMB, unredacted copies of which reportedly were obtained by the online forum *Just Security*, corroborate the witnesses who testified that the military aid for Ukraine was withheld at the express direction of President Trump and that the White House was informed that doing so may violate the law. *See* Just Security Report, https://perma.cc/VA6U-RYPK.
300. *See* Letter from Pat A. Cipollone, Counsel to the President, to William Pittard, Counsel to Acting Chief of Staff Mick Mulvaney (Nov. 8, 2019), https://perma.cc/9PHC-84AM; Letter from Pat A. Cipollone, Counsel to the President, to William Burck, Counsel to Deputy Counsel to the President for Nat'l Security Affairs John Eisenberg (Nov. 3, 2019), https://perma.cc/QP4G-YMKQ.
301. *See, e.g.*, Letter from Jason A. Yaworske, Associate Dir. for Leg. Affairs, Office of Mgmt. & Budget, to Chairman Adam B. Schiff, House Permanent Select Comm. on Intelligence (Nov. 4, 2019), https://perma.cc/4AYC-8SD9 (asserting OMB's ''position that, as directed by the White House Counsel's October 8, 2019 letter, OMB will not participate in this partisan and unfair inquiry,'' and that three OMB officials would therefore defy subpoenas for their testimony).
302. *See* H. Rep. No. 116–335, at 195, 198–99, 201, 203. Such witnesses included Robert Blair, Michael Ellis, P. Wells Griffith, Russell Vought, and Brian McCormack. *Id.*
303. *See id.* at 193–206 (describing and quoting from correspondence with each witness who refused to appear).
304. *See* H. Rep. No. 116–346, at 200, 365; *see, e.g.*, Letter from Chairman Adam B. Schiff, House Permanent Select Comm. on Intelligence, et al., to Michael Duffey, Assoc. Dir. for Nat'l Sec. Programs, Office of Mgmt. & Budget (Oct. 25, 2019), https://perma.cc/3S5B-FH94; Email from Daniel S. Noble, Senior Investigative Counsel, House Permanent Select Comm. on Intelligence, to Mick Mulvaney, Acting Chief of Staff to the President (Nov. 7, 2019), https://perma.cc/A62P-5ACG.
305. *See, e.g.*, Letter from Brian Bulatao, Under Sec'y of State for Mgmt., Dep't of State, to Lawrence S. Robbins, Counsel to Ambassador Marie Yovanovitch 1 (Oct. 10, 2019), https://perma.cc/48UC-KJCM (''I write on behalf of the Department of State, pursuant to the President's instruction reflected in Mr. Cipollone's letter, to instruct your client . . . consistent with Mr. Cipollone's letter, not to appear before the Committees.''); id. at 3–10 (enclosing Mr. Cipollone's letter); Letter from David L. Norquist, Deputy Sec'y of Def., Dep't of Def., to Daniel Levin, Counsel to Deputy Assistant Sec'y of Def. Laura K. Cooper 1–2 (Oct. 22, 2019), https://perma.cc/WM97-DZJZ (''This letter informs you and Ms. Cooper of the Administration-wide direction that Executive Branch personnel 'cannot participate in [the impeachment] inquiry under these circumstances.' '' (quoting Mr. Cipollone's letter)); *id.* at 25–32 (enclosing Mr. Cipollone's letter).
306. *See* H. Rep. No. 116–346, at 9; *see also Read for Yourself: President Trump's Abuse of Power*, House Permanent Select Comm. on Intelligence, https://perma.cc/2L54-YY9P.
307. *See* H. Rep. No. 116–346, at 9.
308. *See id.* at 10–11.
309. *See* H. Rep. No. 116–335, at 217–20 (detailing the ways that ''President Trump publicly attacked and intimidated witnesses who came forward to comply with duly authorized subpoenas and testify about his conduct.''); H. Rep. No. 116–346, at 366–67.
310. *See* H. Rep. No. 116–335, at 221–23 (detailing the ways that President Trump ''threatened and attacked an Intelligence Community whistleblower''); H. Rep. No. 116–346, at 366–67.
311. *See generally* Mueller Report, Vol. II; H. Rep. No. 116–346, at 159–61.
312. Mueller Report, Vol. II at 85–86.
313. *Id.*, Vol. II at 114–17.
314. *Id.*, Vol. II at 90–93.
315. *Id.*, Vol. II at 120–56.
316. *See* Comm. on the Judiciary v. McGahn,—F. Supp. 3d—, No. 19–2379. 2019 WL 6312011 (D.D.C. Nov. 25, 2019), appeal pending, No. 19–5331 (D.C. Cir.). The U.S. Court of Appeals for the D.C. Circuit heard oral argument in the case on January 3, 2020.
317. Mueller Report, Vol. I at 1 (describing the scope of the order appointing Special Counsel Mueller).

318. *See, e.g., id.*, Vol. I at 1–2 (the Trump Campaign ''expected it would benefit electorally from information stolen and released through Russian efforts'').

319. *See generally id.*, Vol. II. As the Mueller Report summarizes, the Special Counsel's investigation ''found multiple acts by the President that were capable of exerting undue influence over law enforcement investigations, including the Russian-interference and obstruction investigations. The incidents were often carried out through one-on-one meetings in which the President sought to use his official power outside of usual channels. These actions ranged from efforts to remove the Special Counsel and to reverse the effect of the Attorney General's recusal; to the attempted use of official power to limit the scope of the investigation; to direct and indirect contacts with witnesses with the potential to influence their testimony.'' *Id.*, Vol. II at 157.

[In Proceedings Before the United States Senate]

TRIAL MEMORANDUM OF PRESIDENT DONALD J. TRUMP

EXECUTIVE SUMMARY

The Articles of Impeachment now before the Senate are an affront to the Constitution and to our democratic institutions. The Articles themselves—and the rigged process that brought them here—are a brazenly political act by House Democrats that must be rejected. They debase the grave power of impeachment and disdain the solemn responsibility that power entails. Anyone having the most basic respect for the sovereign will of the American people would shudder at the enormity of casting a vote to impeach a duly elected President. By contrast, upon tallying their votes, House Democrats jeered until they were scolded into silence by the Speaker. The process that brought the articles here violated every precedent and every principle of fairness followed in impeachment inquiries for more than 150 years. Even so, all that House Democrats have succeeded in proving is that the President did absolutely nothing wrong.

After focus-group testing various charges for weeks, House Democrats settled on two flimsy Articles of Impeachment that allege no crime or violation of law whatsoever—much less ''high Crimes and Misdemeanors,'' as required by the Constitution. They do not remotely approach the constitutional threshold for removing a President from office. The diluted standard asserted here would permanently weaken the Presidency and forever alter the balance among the branches of government in a manner that offends the constitutional design established by the Founders. House Democrats jettisoned all precedent and principle because their impeachment inquisition was never really about discovering the truth or conducting a fair investigation. Instead, House Democrats were determined from the outset to find some way—any way—to corrupt the extraordinary power of impeachment for use as a political tool to overturn the result of the 2016 election and to interfere in the 2020 election. All of this is a dangerous perversion of the Constitution that the Senate should swiftly and roundly condemn.

I. The articles fail because they do not identify any impeachable offense

A. House Democrats' Theory of ''Abuse of Power'' Is Not an Impeachable Offense

House Democrats' novel theory of ''abuse of power'' improperly supplants the standard of ''high Crimes and Misdemeanors'' with a made-up theory that would permanently weaken the Presidency by effectively permitting impeachments based merely on policy disagreements.

1. By limiting impeachment to cases of ''Treason, Bribery, or other high Crimes and Misdemeanors,'' [1] the Framers restricted impeachment to specific offenses against ''already known and established law.'' [2] That was a deliberate choice designed to constrain the impeachment power. In keeping with that restriction, every prior presidential impeachment in our history has been based on alleged violations of existing law—indeed, criminal law.[3] House Democrats' newly invented ''abuse of power'' theory collapses at the threshold because it fails to allege any violation of law whatsoever.

2. House Democrats' concocted theory that the President can be impeached for taking permissible actions if he does them for what they believe to be the wrong reasons would also expand the impeachment power beyond constitutional bounds. It would allow a hostile House to attack almost any presidential action by challenging a President's subjective motives. Worse, House Democrats' methods for identifying supposedly illicit motives ignore the constitutional structure of our government. As proof of improper motive, they claim that the President supposedly ''disregarded United States foreign policy towards Ukraine,'' [4] that he was ''briefed on official policy'' [5] but chose to ignore it, and that he ''ignored, defied, and confounded every office and agency within the Executive Branch.'' [6] These assertions are preposterous and dangerous. They misunderstand the assignment of power under the Constitution and the very concept of democratic accountability. Article II states that ''[t]he executive Power shall be vested in a President.'' [7] It is the President who defines foreign policy, not the unelected bureaucrats who are his subordinates. Any theory of an impeachable offense that turns on ferreting out supposedly ''constitutionally improper'' [8] motives by measuring the President's policy decisions against a purported interagency consensus [9] is both fundamentally anti-democratic and an absurdly impermissible inversion of the constitutional structure.

B. House Democrats' Theory of ''Obstruction of Congress'' Is Not an Impeachable Offense

House Democrats' ''obstruction of Congress'' claim is frivolous and dangerous. House Democrats propose removing the President from office because he asserted legal rights and privileges of the Executive Branch against defective subpoenas—based on advice from the Department of Justice. Accepting that theory would do lasting damage to the separation of powers.

1. President Trump properly asserted executive branch prerogatives

Contrary to the mistaken charge that the President lacked ''lawful cause or excuse'' to resist House Democrats' subpoenas,[10] the President acted only after securing advice from the Department of Justice's Office of Legal Counsel (OLC) and based on established legal principles or immunities.

a. Several Executive Branch officials refused to comply with subpoenas purportedly issued pursuant to an ''impeachment inquiry'' before the House had authorized any such inquiry, because, as OLC advised, the subpoenas were unauthorized and had no legal force.[11]

b. The President directed three of his most senior advisers not to comply with subpoenas seeking their testimony because they are immune from compelled testimony before Congress. Through administrations of both political parties, OLC ''has repeatedly provided for nearly five decades'' that ''Congress may not constitutionally compel the President's senior advisers to testify about their official duties.'' [12] In the Clinton administration, for example, Attorney General Janet Reno explained that ''the immunity such [immediate] advisers enjoy from testimonial compulsion by a congressional committee is absolute and may not be overborne by competing congressional interests.'' [13]

c. Under the President's supervision, Executive Branch officials were directed not to comply with subpoenas because the committees seeking their testimony refused to allow them to be accompanied by agency counsel. OLC concluded that the committees ''may not bar agency counsel from assisting an executive branch witness without contravening the legitimate prerogatives of the Executive Branch,'' and that attempting to enforce a subpoena while barring agency counsel ''would be unconstitutional.'' [14]

2. Defending the separation of powers is not an impeachable offense

Contrary to House Democrats' claims, asserting legal rights and constitutional privileges of the Executive Branch is not ''obstruction.''

a. In a government of laws, asserting legal defenses cannot be treated as obstruction; it is a fundamental right. As the Supreme Court has instructed: ''[F]or an agent of the State to pursue a course of action whose objective is to penalize a person's reliance on his legal rights is 'patently unconstitutional.' '' [15] The same principles apply in impeachment. During the Clinton impeachment, Harvard Law Professor Laurence Tribe put it this way:

The allegations that invoking privileges and otherwise using the judicial system to shield information . . . is an abuse of power that should lead to impeachment and removal from office is not only frivolous, but also dangerous.[16]

In 1998, now-Chairman Jerrold Nadler agreed that a president cannot be impeached for asserting a legal privilege: ''[T]he use of a legal privilege is not illegal or impeachable by itself, a legal privilege, executive privilege.'' [17] And Chairman Adam Schiff has turned the law on its head with his unprecedented claim that it is ''obstruction'' for any official to assert rights that might prompt House committees even ''*to consider* litigation'' to establish the validity of their subpoenas in court.[18]

b. Where, as here, the principles the President invoked are critical for preserving Executive Branch prerogatives, treating the assertion of privileges as ''obstruction'' would do permanent damage to the separation of powers—among all three branches. House Democrats have essentially announced that they may treat any resistance to their demands as ''obstruction'' without taking *any* steps to resolve their dispute with the President. Accepting that unprecedented approach would fundamentally damage the separation of powers by making the House itself the sole judge of its authority. It would permit Congress to threaten *every* President with impeachment merely for protecting the prerogatives of the Presidency. As Professor Jonathan Turley testified before the House Judiciary Committee: ''Basing impeachment on this obstruction theory would itself be an abuse of power . . . *by Congress*.'' [19]

c. At bottom, the ''obstruction'' charge asks the Senate to remove a duly elected President from office because he acted on the advice of the Department of Justice concerning his legal and constitutional rights as President. Stating that proposition exposes it as frivolous. The Framers restricted impeachment to reach only egregious conduct that endangers the Constitution. A difference of legal opinion over whether subpoenas are enforceable cannot be dressed up to approach that level. As Edmund Randolph explained in the Virginia ratifying convention, ''No man ever thought of impeaching a man for an opinion.'' [20]

II. The impeachment inquiry in the House was irredeemably flawed

A. House Democrats' Inquiry Violated All Precedent and Due Process

1. The process that resulted in these Articles of Impeachment was flawed from the start. Since the Founding of the Republic, the House has never launched an impeachment inquiry against a President without a vote of the full House authorizing it. And there is good reason for that. No committee can investigate pursuant to powers assigned by the Constitution to the House—including the ''sole Power of Impeachment''[21]—unless the House has voted to delegate authority to the committee.[22] Here, it was emblematic of the lack of seriousness that characterized this whole process that House Democrats cast law and history aside and started their purported inquiry with nothing more than a press conference.[23] On that authority alone, they issued nearly two dozen subpoenas that OLC determined were unauthorized and invalid.[24] The full House did not vote to authorize the inquiry until five weeks later when it adopted House Resolution 660 on October 31, 2019. That belated action was a telling admission that the process was unauthorized.

2. Next, House Democrats concocted an unheard of procedure that denied the President any semblance of fair process. The proceedings began with secret hearings in a basement bunker before three committees under the direction of Chairman Schiff of the House Permanent Select Committee on Intelligence (HPSCI). The President was denied any right to participate at all. He was denied the right to have counsel present, to cross examine witnesses, to call witnesses, and to see and present evidence. Meanwhile, House Democrats selectively leaked distorted versions of the secret testimony to compliant members of the press, who happily fed the public a false narrative about the President.

Then, House Democrats moved on to a true show trial as they brought their hand-picked witnesses, whose testimony had already been set in private, before the cameras to present prescreened testimony to the public. There, before HPSCI, they continued to deny the President any rights. He could not be represented by counsel, could not present evidence or witnesses, and could not cross examine witnesses.

This process not only violated every precedent from the Nixon and Clinton impeachment inquiries, it violated every principle of justice and fairness known to our legal tradition. For more than 250 years, the common law system has regarded cross-examination as the ''greatest legal engine ever invented for the discovery of truth.''[25] House Democrats denied the President that right and every other right because they were not interested in the truth. Their only interest was securing an impeachment, and they knew that a fair process could not get them there.

When the impeachment stage-show moved on to the Judiciary Committee, House Democrats again denied the President his rights. The Committee had already decided to forego fact-finding and to adopt the one-sided record from HPSCI's *ex parte* hearings. Worse, Speaker Nancy Pelosi had already instructed the Committee to draft articles of impeachment. The only role for the Committee was to ram through the articles to secure a House vote by Christmas.[26] There could not have been a more blatant admission that evidence did not matter, the process was rigged, and impeachment was a preordained result.

All of this reflected shameful hypocrisy from House Democrat leaders, who for decades had insisted on the importance of due process protections in an impeachment inquiry. Chairman Nadler himself has explained that a House impeachment inquiry ''demands a rigorous level of due process.''[27] Specifically, he explained that ''due process mean[s] . . . the right to confront the witnesses against you, to call your own witnesses, and to have the assistance of counsel.''[28] Here, however, all due process rights were denied to the President.

3. Chairman Schiff's hearings were fatally defective for another reason—Schiff himself was instrumental in helping to create the story behind them. This inquiry centered on the President's conversation on July 25, 2019, with the President of Ukraine. That call became a matter of public speculation after a so-called whistleblower relayed a distorted, second-hand version of the call to the Inspector General of the Intelligence Community (ICIG). Before laundering his distortions through the ICIG, the same person secretly shared his false account with Chairman Schiff's HPSCI staff and asked ''for guidance.''[29] After initially lying about it, Chairman Schiff was forced to admit that his staff had conferred with the so-called whistleblower before he filed his complaint. But the entirety of the role that Chairman Schiff and his staff played in orchestrating the complaint that launched this entire farce remains shrouded in secrecy to this day—Chairman Schiff himself shut down every effort to inquire into it.

4. The denial of basic due process rights to the President is such a fundamental error infecting the House proceedings that the Senate could not possibly rely upon the corrupted House record to reach a verdict of conviction. Any such record is tainted, and any reliance on a record created through the wholesale denial of due process rights would be unconstitutional. Nor is it the Senate's role to remedy the House's errors by providing a ''do-over'' and developing the record itself.

B. House Democrats' Goal Was Never to Ascertain the Truth

House Democrats resorted to these unprecedented procedures because the goal was never to get to the truth. The goal was to impeach the President, no matter the facts.

House Democrats' impeachment crusade started *the day the President took office*. As Speaker Pelosi confirmed in December 2019, her party's quest to impeach the President had already been ''going on for 22 months . . . [t]wo and a half years, actually.''[30] The moment the President was sworn in, *The Washington Post* reported that partisans had launched a campaign to impeach him.[31] The current proceedings began with a complaint prepared with the assistance of a lawyer who declared in 2017 that he would use ''impeachment'' to effect a ''coup.''[32]

House Democrats originally pinned their impeachment hopes on the lie that the Trump Campaign had colluded with Russia during the 2016 election. That fixation brought the country the Mueller investigation. But after almost two years, $32 million, 2,800 subpoenas, and nearly 500 search warrants[33]—along with incalculable damage to the Nation—the Mueller investigation thoroughly disproved Democrats' Russian collusion delusion. To make matters worse, we now know that the Mueller investigation (and its precursor, Crossfire Hurricane) also brought with it shocking abuses in the use of FISA orders to spy on American citizens and a major-party presidential campaign—including omissions and even outright lies to the Foreign Intelligence Surveillance Court and the fabrication of evidence by a committed partisan embedded in the FBI.

House Democrats could not tolerate the findings of the Mueller Report debunking the collusion myth. Instead, they launched hearings and issued subpoenas straining to find wrongdoing where Special Counsel Mueller and the Department of Justice had found none. And they launched new investigations, trying to rummage through the President's tax returns and pushing fishing expeditions everywhere in the hope that they might find something. No other President in history has been subjected to a comparable barrage of investigations, subpoenas, and lawsuits, all in service of an insatiable partisan desire to find some way to remove him from office.

When those proceedings went nowhere, House Democrats seized on the next vehicle that could be twisted to carry their impeachment dream: a perfectly appropriate telephone call between President Trump and the President of Ukraine. House Democrats have pursued their newly concocted charges for two reasons. First, they have been obsessed for years with overturning the 2016 election. Radical left Democrats have never been able to come to grips with losing the election, and impeachment provides them a way to nullify the judgment of the tens of millions of voters who rejected their candidate. Second, they want to use impeachment to interfere in the 2020 election. It is no accident that the Senate is being asked to consider a presidential impeachment during an election year. Put simply, Democrats have no response to the President's record of achievement in restoring prosperity to the American economy, rebuilding America's military, and confronting America's adversaries abroad. Instead, they are held hostage by a radical left wing that has foisted on their party an agenda of socialism at home and appeasement abroad that Democrat leaders know the American people will never accept. For the Democrats, impeachment became an electoral imperative. Congressman Al Green summarized that thinking best: ''[I]f we don't impeach the [P]resident, he will get reelected.''[34] In their scorched-earth campaign against the President, House Democrats view impeachment merely as the continuation of politics by other means.

The result of House Democrats' pursuit of their obsessions—and their willingness to sacrifice every precedent and every principle standing in their way—is exactly what the Framers warned against: a wholly partisan impeachment. These articles were adopted without a single Republican vote. Indeed, there was bipartisan *opposition* to them.[35]

Democrats used to recognize that the momentous act of overturning a national election by impeaching a President should never be done on a partisan basis. As Chairman Nadler explained:

There must never be a narrowly voted impeachment or an impeachment supported by one of our major political parties and opposed by another. Such an impeachment will produce divisiveness and bitterness in our politics for years to come, and will call into question the very legitimacy of our political institutions.[36]

Senator Patrick Leahy agreed: ''A partisan impeachment cannot command the respect of the American people. It is no more valid than a stolen election.''[37] Chairman Nadler, again, acknowledged that merely ''hav[ing] the votes'' and ''hav[ing] the muscle'' in the House, without ''the legitimacy of a national consensus,'' is just an attempted ''partisan coup d'etat.''[38] Just last year, even Speaker Pelosi acknowledged that an impeachment ''would have to be so clearly bipartisan in terms of acceptance of it.''[39] All of these prior invocations of principle have now been abandoned, adding to the wreckage littering the wake of House Democrats' impeach-at-all-costs strategy.

III. Article I fails because House Democrats have no evidence to support their claims

A. The Evidence Shows That the President Did Not Condition Security Assistance or a Presidential Meeting on Announcements of Any Investigations

House Democrats have falsely charged that the President supposedly conditioned military aid or a presidential meeting on Ukraine's announcing a specific investigation. Yet despite running an entirely ex parte, one-sided process to gather evidence, House Democrats do not have a *single witness* who claims, based on direct knowledge, that the President ever actually imposed such a condition. Several undisputed, core facts make clear that House Democrats' charges are baseless.

1. In an unprecedented display of transparency, the President released the transcript of his July 25 call with President Volodymyr Zelensky, and it shows that the President did nothing wrong. The Department of Justice reviewed the transcript months ago and rejected the suggestion by the ICIG (based on the whistleblower's distorted account) that the call might have raised an election-law violation.[40]

2. President Zelensky, his Foreign Minister, and other Ukrainian officials have repeatedly said there was no quid pro quo and no pressure placed on them by anyone.

3. President Zelensky, his senior advisers, and House Democrats' own witnesses have all confirmed that Ukraine's senior leaders did not even know the aid was paused until after a *Politico* article was published on August 28, 2019—over a month after the July 25 call and barely two weeks before the aid was released on September 11.

4. House Democrats' case rests almost entirely on: (i) statements from Ambassador to the European Union Gordon Sondland that he had come to *believe* (before talking to the President) that the aid and a meeting were ''likely'' linked to investigations; and (ii) hearsay and speculation from others echoing Sondland second- or third-hand. But Sondland admitted that he was only ''presuming'' a link.[41] He stated unequivocally that he has no evidence ''[o]ther than [his] own presumption'' that President Trump connected releasing the aid to investigations, and he agreed that ''[n]o one on this planet told [him] that Donald Trump was tying aid to investigations.''[42] Similarly, as for a link between a meeting and investigations, Sondland admitted that he was *speculating* about that as well, based on hearsay.[43] When asked if ''the President ever [told him] personally about any preconditions for anything''—*i.e.*, for aid or a meeting—Sondland responded, ''No.''[44] And when Ambassador Kurt Volker, the special envoy who had actually been negotiating with the Ukrainians, was asked if the President ever withheld a meeting to pressure the Ukrainians, he said: ''The answer to the question is no.''[45] ''[T]here was no linkage like that.''[46]

The only two people with statements on record who spoke directly to the President on the matter—Sondland and Senator Ron Johnson—directly contradicted House Democrats' false allegations. Sondland testified that when he asked the President what he wanted, the President stated unequivocally: ''I want nothing. I want no quid pro quo.''[47] Similarly, Senator Johnson related that, when he asked the President if there was any linkage between investigations and the aid, the President responded: ''(Expletive deleted)—No way. I would never do that.''[48]

5. The military aid flowed on September 11, 2019, and a presidential meeting was first scheduled for September 1 and then took place on September 25, 2019, all without the Ukrainian government having done anything about investigations.

6. The undisputed reality is that U.S. support for Ukraine against Russia has *increased* under President Trump. President Trump provided Ukraine Javelin anti-tank missiles to use against Russia after President Obama refused to provide that assistance. President Trump also imposed heavy sanctions on Russia, for which President Zelensky thanked him.[49] A parade of State Department and National Security Council (NSC) career officials universally acknowledged that President Trump's policy was stronger in support of Ukraine against Russia than his predecessor's. Ambassador Yovanovitch testified that ''our policy actually got stronger'' under President Trump,[50] and Ambassador Taylor agreed that aid under President Trump was a ''substantial improvement'' over the previous administration, largely because ''this administration provided Javelin anti-tank weapons,'' which ''are serious weapons'' that ''will kill Russian tanks.''[51]

The evidence shows that President Trump had legitimate concerns about corruption and burden-sharing with our allies—two consistent themes in his foreign policy. When his concerns had been addressed, the aid was released on September 11 without any action concerning investigations. Similarly, a bilateral meeting with President Zelensky was first scheduled for September 1 in Warsaw and, after rescheduling due to Hurricane Dorian, took place on September 25 in New York, again, all without the Ukrainians doing anything related to investigations.

As Professor Turley summed it up, this impeachment ''stand[s] out among modern impeachments as the shortest proceeding, with the thinnest evidentiary record, and the narrowest grounds ever used to impeach a president.''[52] It is a constitutional travesty.

B. House Democrats Rest on the False Premise that There Could Have Been No Legitimate Reason To Mention 2016 or the Biden-Burisma Affair

The charges in Article I are further flawed because they rest on the mistaken premise that it would have been illegitimate for the President to mention to President Zelensky either (i) possible Ukrainian interference in the 2016 election; or (ii) an incident in which then-Vice President Biden had forced the dismissal of a Ukrainian prosecutor. House Democrats acknowledge that, even under their theory of ''abuse of power,'' they must establish (in their words) that these matters were ''bogus'' or ''sham investigations''[53]—that the *only* reason for raising them would have been ''to obtain an improper personal political benefit.''[54] But that is obviously false. Even if the President had raised those issues, there were legitimate reasons to do so.

1. Uncovering potential foreign interference in U.S. elections is always a legitimate goal, whatever the source of the interference and whether or not it fits with Democrats' preferred narrative about 2016. House Democrats' assertion that asking historical questions about the *last* election somehow equates to securing ''improper interference'' in the *next* election is nonsensical. Asking about the past cannot be twisted into interference in a future election. Even if facts uncovered about conduct in the last election were to have some impact on the next election, uncovering historical facts is not improper interference. Nor can House Democrats self-servingly equate asking any questions about Ukraine with advocating that Ukraine, *instead of Russia,* interfered in 2016.[55] Actors in more than one country can interfere in an election at the same time, in different ways and for different purposes. And there has been plenty of public reporting to give reason to be suspicious about many Ukrainians' conduct in 2016. Even one of House Democrats' own star witnesses, Dr. Fiona Hill, acknowledged that Ukrainian officials ''bet on Hillary Clinton winning the election,'' and that ''they were trying to curry favor with the Clinton campaign'' including by ''trying to collect information . . . on Mr. Manafort and on other people as well.''[56] All of that—and more—provides legitimate grounds for inquiry.

2. It also would have been legitimate to mention the Biden-Burisma affair. Public reports indicate that then-Vice President Biden threatened withholding U.S. loan guarantees to secure the dismissal of a Ukrainian prosecutor even though Biden was, at the time, operating under what appeared to be, at the very least, a serious conflict of interest. The prosecutor reportedly had been investigating Burisma—a Ukrainian energy company notorious for corruption—and Biden's son, Hunter, was sitting on Burisma's board.[57] Unless being son of the Vice President counted, Hunter had no apparent qualifications to merit that seat, or to merit being compensated (apparently) more richly than board members at Fortune 100 energy giants like ConocoPhillips.[58] In fact, numerous career State Department and NSC employees agreed that Hunter Biden's connection with Burisma created, at a minimum, the appearance of a conflict of interest,[59] and *The Washington Post* reported as early as 2014 that ''[t]he appointment of the [V]ice [P]resident's son to a Ukrainian oil board looks nepotistic at best, nefarious at worst.''[60] More than one official raised the issue with the Vice President's office at the time, but the Vice President took no action in response.[61]

On those facts, it would have been appropriate to raise this incident with President Zelensky. Ukraine cannot rid itself of corruption if its prosecutors are always stymied. Here, public reports suggested that Vice President Biden played a role in derailing a legitimate inquiry while under a monumental conflict of interest. If Biden were not running for President, House Democrats would not argue that merely raising the incident would have been improper. But former Vice President Biden did not immunize his past conduct (or his son's) from all scrutiny simply by declaring his candidacy for the presidency.

Importantly, even under House Democrats' theory, mentioning the matter to President Zelensky would have been entirely justified as long as there was a basis to think that would advance the public interest. To defend merely *asking a question*, the President would not have to show that Vice President Biden (or his son) actually committed any wrongdoing. By contrast, under their own theory of the case, to show ''abuse of power,'' the House Managers would have to prove that the inquiry could have no public purpose whatsoever. They have no such evidence. The record shows it would have been legitimate to mention the Biden-Burisma affair.

IV. The articles are structurally deficient and can only result in acquittal

The articles are also defective because each charges multiple different acts as possible grounds for conviction. The problem with offering such a menu of options is that, for a valid conviction, the Constitution requires two-thirds of Senators present to agree *on the specific basis for conviction*. A vote on these articles, however, cannot ensure that a two-thirds majority agreed on a particular ground for conviction. Instead, such a vote could reflect an amalgamation of votes resting on several different theories, no single one of which would have garnered two-thirds support if it had been presented separately. This structural deficiency cannot be remedied by dividing the different allegations within each article for voting, because

that is prohibited under Senate rules.[62] The only constitutional option is for the Senate to reject the articles as framed and acquit the President.

The Framers foresaw that the House might at times fall prey to tempestuous partisan tempers. Alexander Hamilton recognized that ''the persecution of an intemperate or designing majority in the House of Representatives'' was a real danger in impeachments,[63] and Jefferson acknowledged that impeachment provided ''the most formidable weapon for the purposes of dominant faction that ever was contrived.''[64] That is why the Framers entrusted the trial of impeachments to the Senate. As Justice Story explained, the Framers saw the Senate as a tribunal ''removed from popular power and passions . . . and from the more dangerous influence of mere party spirit,'' and guided by ''a deep responsibility to future times.''[65] Now, perhaps as never before, it is essential for the Senate to fulfill the role Hamilton envisioned for it as a ''guard[] against the danger of persecution, from the prevalency of a factious spirit'' in the House.[66]

The Senate should speedily reject these deficient Articles of Impeachment and acquit the President. The only threat to the Constitution that House Democrats have brought to light is their own degradation of the impeachment process and trampling of the separation of powers. Their fixation on damaging the President has trivialized the momentous act of impeachment, debased the standards of impeachable conduct, and perverted the power of impeachment by turning it into a partisan, election-year political tool. The consequences of accepting House Democrats' diluted standards for impeachment would reverberate far beyond this election year and do lasting damage to our Republic. As Senator Lyman Trumbull, one of the seven Republican Senators who crossed the aisle to vote against wrongfully convicting President Andrew Johnson, explained: ''Once [we] set the example of impeaching a President for what, when the excitement of the hour shall have subsided, will be regarded as insufficient causes . . . no future President will be safe . . . . [A]nd what then becomes of the checks and balances of the Constitution, so carefully devised and so vital to its perpetuity? They are all gone.''[67] It is the solemn duty of this body to be the bulwark of the Constitution protecting against exactly this result.

Enough of the Nation's time and resources have been wasted on House Democrats' partisan obsessions. The Senate should bring a decisive end to these excesses so that Congress can get back to its real job: working together with the President to improve the lives of all Americans.

STANDARDS

The extraordinary process invoked by House Democrats under Article II, Section 4 of the Constitution is not the constitutionally preferred means to determine who should lead our country. It is a mechanism of last resort, reserved for exceptional circumstances—not present here—in which a President has engaged in unlawful conduct that strikes at the core of our constitutional system of government.

A. The Senate Must Decide All Questions of Law and Fact.

The Constitution makes clear that an impeachment by the House of Representatives is nothing more than an accusation. The Articles of Impeachment approved by the House come to the Senate with no presumption of regularity in their favor. On each of the two prior occasions that the House adopted articles of impeachment against a President, the Senate refused to convict on them. Indeed, the Framers wisely forewarned that the House could impeach for the wrong reasons.[68] That is why the Constitution entrusts the Senate with the ''sole Power to try all Impeachments.''[69] Under that charge, it is the Senate's constitutional duty to decide for itself all matters of law and fact bearing upon this trial.[70] These decisions include whether the accusation presented by House Democrats even rises to the level of describing an impeachable offense, the standard of proof that House Democrats must meet to prove their case, and whether they have met this burden. As Rep. John Logan, a House manager in President Johnson's impeachment trial, explained ''all questions of law or of fact are to be decided in these proceedings by the final vote''[71] of the Senate, and ''in determining this general issue Senators must consider the sufficiency or insufficiency in law or in fact of every article of accusation.''[72]

B. An Impeachable Offense Requires a Violation of Established Law that Inflicts Sufficiently Egregious Harm on the Government that It Threatens to Subvert the Constitution.

The President of the United States occupies a unique position in the structure of our government. He is chosen directly by the People through a national election to be the head of an entire branch of government and Commander-in-Chief of the armed forces and is entrusted with enormous responsibilities for setting policies for the Nation. Whether Congress should supplant the will expressed by tens of millions of voters by removing the President from office is a question of breathtaking gravity. Approaching that question requires a clear understanding of the limits the Constitution places on what counts—and what does not count—as an impeachable offense.

1. Text and Drafting History of the Impeachment Clause

Fearful that the power of impeachment might be abused, and recognizing that constitutional protections were required for the Executive, the Framers crafted a *limited* power of impeachment.[73] The Constitution restricts impeachment to enumerated offenses: ''Treason, Bribery, or other high Crimes and Misdemeanors.''[74] Treason and bribery are well defined offenses and are not at issue in this case. The operative text here is the more general phrase ''other high Crimes and Misdemeanors.'' The structure and language of the clause—the use of the adjective ''other'' to describe ''high Crimes and Misdemeanors'' in a list immediately following the specific offenses ''Treason'' and ''Bribery''—calls for applying the ejusdem generis canon of interpretation. This canon instructs that '' '[w]here general words follow specific words in a statutory enumeration, the general words are construed to embrace only objects similar in nature to those objects enumerated by the preceding specific words.''[75] Under that principle, ''other high Crimes and Misdemeanors'' must be understood to have the same qualities—in terms of seriousness and their effect on the functioning of government—as the crimes of ''Treason'' and ''Bribery.''[76]

Treason is defined specifically in the Constitution and ''consist[s] only in levying War against [the United States], or in adhering to their Enemies, giving them Aid and Comfort.''[77] This offense is ''a crime against and undermining the very existence of the Government.''[78] Bribery, like treason, is a serious offense against the government that subverts the proper functioning of the state. Blackstone, a ''dominant source of authority'' for the Framers,[79] called bribery an ''offense against public justice.''[80] Professor Akhil Amar describes bribery as ''secretly bending laws to favor the rich and powerful'' and contends that in this context it ''involves official corruption of a highly malignant sort, threatening the very soul of a democracy committed to equality under the law.''[81] According to Professor Philip Bobbitt, ''[l]ike treason, the impeachable offense of bribery . . . must be an act that actually threatens the constitutional stability and security of the State.''[82] The text of the Constitution thus indicates that the ''other'' crimes and misdemeanors that qualify as impeachable offenses must be sufficiently egregious that, like treason and bribery, they involve a fundamental betrayal that threatens to subvert the constitutional order of government.

Treason and bribery are also, of course, offenses defined by law. Each of the seven other references in the Constitution to impeachment also supports the conclusion that impeachments must be evaluated in terms of offenses against settled law: The Constitution refers to ''Conviction'' for impeachable offenses twice[83] and ''*Judgment* in Cases of Impeachment.''[84] It directs the Senate to ''*try* all Impeachments''[85] and requires the Chief Justice's participation when the President is ''tried.''[86] And it implies impeachable offenses are ''Crimes'' and ''Offenses'' in the Jury Trial Clause and the Pardon Clause, respectively.[87] These are all words that indicate violations of established law.

The use of the term ''high'' in the Impeachment Clause is also significant, and was clearly deliberate. Under English common law, ''high'' indicated crimes against the state; Blackstone defined ''high treason'' to include only offenses against ''the supreme executive power, or the king and his government,'' calling it the ''highest civil crime.''[88]

In addition, ''high Crimes and Misdemeanors'' had a technical meaning in English law,[89] and there is evidence that the Framers were aware of this ''limited,'' ''technical meaning.''[90] In England, ''high Crimes and Misdemeanors'' referred to offenses that could be the subject of impeachment in parliament. No less an authority than Blackstone, however, made clear that ''an impeachment before the lords by the commons of Great Britain, in parliament, is *a prosecution of the already known and established law*.''[91] As a result, nothing in the Constitution's use of the term ''other high Crimes and Misdemeanors'' suggests that impeachment under the Constitution could reach anything other than a known offense defined in existing law.

Significantly, the records of the Constitutional Convention also make clear that, in important respects, the Framers intended the scope of impeachable offenses under the Constitution to be much *narrower* than under English practice. When the draft Constitution had limited the grounds for impeachment to ''Treason, or bribery,''[92] George Mason argued that the provision was too narrow because ''[a]ttempts to subvert the Constitution may not be Treason'' and that the clause ''will not reach many great and dangerous offenses.''[93] He proposed the addition of ''maladministration,''[94] which had been a ground for impeachment in English practice. Madison opposed that change on the ground that ''[s]o vague a term'' would make the President subject to ''a tenure during [the] pleasure of the Senate,''[95] and the Convention agreed on adding ''other high crimes & misdemeanors'' instead.[96]

By rejecting ''maladministration,'' the Framers significantly narrowed impeachment under the Constitution and made clear that mere differences of opinion, unpopular policy decisions, or perceived misjudgments cannot constitutionally be used as the basis for impeachment. Indeed, at various earlier points during the Convention, drafts of the Constitution had included as grounds for impeachment ''malpractice or neglect of

duty'' [97] and ''neglect of duty [and] malversation,'' [98] but the Framers rejected all of these formulations. The ratification debates confirmed the point that differences of opinion or differences over policy could not justify impeachment. James Iredell warned delegates to North Carolina's ratifying convention that ''[a] mere difference of opinion might be interpreted, by the malignity of party, into a deliberate, wicked action,'' [99] and thus should not provide the basis for impeachment. And Edmund Randolph pointed out in the Virginia ratifying convention that ''[n]o man ever thought of impeaching a man for an opinion.'' [100]

Taken together, the text, drafting history, and debates surrounding the Constitution make several points clear. First, the debates ''make quite plain that the Framers, far from proposing to confer illimitable power to impeach and convict, intended to confer a *limited* power.'' [101] As Senator Leahy has put it, ''[t]he Framers purposely restrained the Congress and carefully circumscribed [its] power to remove the head of the co-equal Executive Branch.'' [102]

Second, the terminology of ''high Crimes and Misdemeanors'' makes clear that an impeachable offense must be a violation of established law. The Impeachment Clause did not confer upon Congress a roving license to make up new standards of conduct for government officials and to permit removal from office merely on a conclusion that conduct was ''bad'' if there was not an existing law that it violated.

Third, by establishing that ''other'' impeachable offenses must fall in the same class as the specific offenses of ''treason'' and ''bribery,'' the Framers intended to establish a requirement of particularly egregious conduct threatening the constitutional order to justify impeachment. Justice Story recognized impeachment was ''intended for occasional and extraordinary cases'' only.[103] For Professor Bobbitt, ''[a]n impeachable offense is one that puts the Constitution in jeopardy.'' [104] Removal of the freely elected President of the United States based on any lesser standard would violate the plan of the Founders, who built our government on the principle it would ''deriv[e] [its] just powers from the consent of the governed.'' [105]

2. The President's Unique Role in Our Constitutional Structure

For at least two reasons, the President's unique role in our constitutional structure buttresses the conclusion that offenses warranting presidential impeachment must involve especially egregious conduct that threatens to subvert the constitutional order of government.

First, conviction of a President raises particularly profound issues under our constitutional structure because it means overturning the democratically expressed will of the people in the only national election in which all eligible citizens participate. The impeachment power permits the possibility that ''the legislative branch [will] essentially cancel[] the results of the most solemn collective act of which we as a constitutional democracy are capable: the national election of a President.''[106]

As even the House Managers have acknowledged, ''the issue'' in a presidential impeachment trial ''is whether to overturn the results of a national election, the free expression of the popular will of the American people.'' [107] That step can be justified only by an offense crossing an exceptional threshold. As Chairman Nadler has put it, ''[w]e must not overturn an election and remove a President from office except to defend our system of government or our constitutional liberties against a dire threat . . . .'' [108] Especially where the American people are already starting the process of voting for candidates for the next presidential election, removing a President from office and taking that decision away from the people requires meeting an extraordinarily high standard. As then-Senator Biden confirmed during President Clinton's trial, ''to remove a duly elected president will unavoidably harm our constitutional structure'' and ''[r]emoving the President from office without compelling evidence would be historically anti-democratic.'' [109]

Any lesser standard would be inconsistent with the unique importance of the President's role in the structure of the government, the profound disruption and danger of uncertainty that attend to removing a president from office, and the grave implications of negating the will of the people expressed in a national election.

Second, because the President himself is vested with the authority of an entire branch of the federal government, his removal would cause extraordinary disruption to the Nation. Article II, Section 1 declares in no uncertain terms that ''[t]he executive Power shall be vested in a President of the United States of America.'' [110] As Justice Breyer has explained, ''Article II makes a single President responsible for the actions of the Executive Branch in much the same way that the entire Congress is responsible for the actions of the Legislative Branch, or the entire Judiciary for those of the Judicial Branch.'' [111] As a result, ''the application of the Impeachment Clause to the President of the United States involves the uniquely solemn act of having one branch essentially overthrow another.'' [112] It also carries the risk of profound disruption for the operation of the federal government.

As ''the chief constitutional officer of the Executive branch,'' the President is ''entrusted with supervisory and policy responsibilities of utmost discretion and sensitivity.'' [113] Because he is assigned responsibility to ''take Care that the Laws be faithfully executed,'' [114] all federal law enforcement depends, ultimately, on the direction of the President. In addition, he is the Commander-in-Chief of the armed forces [115] and ''the sole organ of the federal government in the field of international relations.'' [116] The foreign policy of the Nation is determined primarily by the President. His removal would necessarily create uncertainty and pose unique risks for U.S. interests around the globe. As OLC put it, removal of the President would be ''politically and constitutionally a traumatic event,'' [117] and Senator Bob Graham rightly called it ''one of the most disruptive acts imaginable in a democracy'' during President Clinton's trial.[118]

3. Practice Under the Impeachment Clause

The practical application of the Impeachment Clause by Congress supports the conclusion that an impeachable offense requires especially egregious conduct that threatens the constitutional order and, specifically, that it requires a violation of established law. The extraordinary threshold required for impeachment is evidenced by the fact that, in over two centuries under our Constitution, the House has impeached a President only twice. In each case, moreover, the Senate found the charges brought by the House insufficient to warrant removal from office.

In addition, until now, even in the articles of impeachment that the Senate found insufficient, the House has *never* impeached a President on charges that did not include a violation of established law. President Clinton was impeached on charges that included perjury and obstruction of justice, both felonies under federal law.[119] Similarly, in the near-impeachment of President Nixon, the articles of impeachment approved by the House Judiciary Committee included multiple violations of law.[120] Article I alleged obstruction of justice.[121] And Article II asserted numerous legal breaches.[122]

The impeachment of Andrew Johnson proves the same point. In 1867, the House Judiciary Committee recommended articles of impeachment against President Johnson. The articles, however, did not allege any violation of law. Largely as a result of that fact, the Committee could not secure approval for them from a majority of the House. The minority report from the Committee arguing *against* adoption of the articles of impeachment explained that ''[t]he House of Representatives may impeach a civil officer, but it must be done according to law. It must be *for some offence known to the law*, and not created by the fancy of the members of the House.'' [123] Rep. James F. Wilson argued the position of the minority report on the House floor, explaining that ''no civil officer of the United States can be lawfully impeached except for a crime or misdemeanor known to the law.'' [124] As one historian has explained, ''[t]he House had refused to impeach Andrew Johnson . . . at least in part because many representatives did not believe he had committed a specific violation of law.'' [125] It was only after President Johnson violated the Tenure of Office Act, a law passed by Congress, that he was successfully impeached.[126]

Even if *judicial* impeachments have been based on charges that do not involve a criminal offense or violation of statute,[127] that would provide no sound basis for diluting the standards for *presidential* impeachment. Textually, the Constitution's Good Behavior Clause alters the standard for the impeachment of judges.[128] In addition, for all the reasons outlined above, the President's unique role in the constitutional structure sets him apart and warrants more rigorous standards for impeachment. ''When Senators remove one of a thousand federal judges (or even one of nine justices), they are not transforming an entire branch of government. But that is exactly what happens when they oust America's one and only President, in whom all executive power is vested by the first sentence of Article II.'' [129] Unlike a presidential impeachment inquiry, impeachment of a federal judge ''does not paralyze the Nation'' or cast doubt on the direction of the country's domestic and foreign policy.[130] Similarly, ''[t]he grounds for the expulsion of the one person elected by the entire nation to preside over the executive cannot be the same as those for one member of the almost four-thousand-member federal judiciary.'' [131] Thus, as then-Senator Biden recognized: ''The constitutional scholarship overwhelmingly recognizes that the fundamental structural commitment to a separation of powers requires [the Senate] to view the President as different than a Federal judge.'' [132] Indeed, ''our history establishes that, as applied, the constitutional standard for impeaching the President has been distinctive, and properly so.'' [133]

C. The Senate Cannot Convict Unless It Finds that the House Managers Have Proved an Impeachable Offense Beyond a Reasonable Doubt

Given the profound implications of removing a duly elected president from office, an exceptionally demanding standard of proof must apply in a presidential impeachment trial.[134] Senators should convict on articles of impeachment against a President only if they find that the House Managers have carried their burden of proving that the President committed an impeachable offense beyond a reasonable doubt.

As Senator Russ Feingold recognized in the Clinton impeachment, ''[i]n making a decision of this magnitude, it is best not to err

at all. If we must err, however, we should err on the side of . . . respecting the will of the people.'' [135] Democrat and Republican Senators alike applied the beyond a reasonable doubt standard during President Clinton's impeachment trial.[136] As Senator Barbara Mikulski put it then: ''The U.S. Senate must not make the decision to remove a President based on a hunch that the charges may be true. The strength of our Constitution and the strength of our Nation dictate that [the Senate] be sure—beyond a reasonable doubt.'' [137]

D. The Senate May Not Consider Allegations Not Charged in the Articles of Impeachment

Under the Constitution, the House is given the ''sole Power of Impeachment'' and the Senate is given the ''sole Power to try all Impeachments.'' [138] An impeachment is literally a ''charge'' of particular wrongdoing.[139] Thus, under the division of responsibility in the Constitution, the Senate can conduct a trial solely on the charges specified in articles of impeachment approved by a vote of the House and presented to the Senate. The Senate cannot expand the scope of a trial to consider mere assertions appearing in House reports that the House did not include in the articles of impeachment submitted to a vote. Similarly, House Managers trying the case in the Senate must be confined to the specific conduct alleged in the Articles approved by the House.

These restrictions follow both from the plain terms of the Constitution limiting the Senate to trying an ''impeachment'' framed by the House and from elementary principles of due process. ''[T]he senator's role is solely one of acting on the accusations (Articles of Impeachment) voted by the House of Representatives. The Senate cannot lawfully find the president guilty of something not charged by the House, any more than a trial jury can find a defendant guilty of something not charged in the indictment.'' [140] ''No principle of procedural due process is more clearly established than that *notice of the specific charge*, and a chance to be heard in *a trial of the issues raised by that charge*, if desired, are among the constitutional rights of every accused.'' [141] As the Supreme Court has explained, it has been the rule for over 130 years that ''a court cannot permit a defendant to be tried on charges that are not made in the indictment against him.'' [142] Doing so is ''fatal error.'' [143]

Under the same principles of due process, the Senate must similarly refuse to consider any uncharged allegations as a basis for conviction.

PROCEDURAL HISTORY

House Democrats have focused these proceedings on a telephone conversation between President Trump and President Zelensky of Ukraine on July 25, 2019.[144] At some unknown time shortly after that call, a staffer in the Intelligence Community (IC)—who had no first-hand knowledge of the call—approached the staff of Chairman Adam Schiff on the House Permanent Select Committee on Intelligence (HPSCI) raising complaints about the call.[145] Although it is known that Chairman Schiff's staff provided the IC staffer some ''guidance,'' [146] the extent of the so-called whistleblower's coordination with Chairman Schiff's staff remains unknown to this day.

The IC staffer retained counsel, including an attorney who had announced just days after President Trump took office that he supported a ''coup'' and ''rebellion'' to remove the President from office.[147]

On August 12, 2019, the IC staffer filed a complaint about the July 25 telephone call with the Inspector General of the IC.[148] The Inspector General found that there was ''some indicia of an arguable political bias on the part of [the so-called whistleblower] in favor of a rival political candidate.'' [149]

On September 24, 2019, Speaker Nancy Pelosi unilaterally announced at a press conference that ''the House of Representatives is moving forward with an official impeachment inquiry'' [150] based on the anonymous complaint about the July 25 telephone call. There was no vote by the House to authorize such an inquiry.

On September 25, pursuant to a previous announcement,[151] the President declassified and released the complete record of the July 25 call.[152]

On September 26, HPSCI held its first hearing regarding the so-called whistleblower complaint.[153] And just one week later, on October 3, Chairman Schiff began a series of secret, closed-door hearings regarding the complaint.[154] The President and his counsel were not permitted to participate in any of these proceedings.

On October 31, after five weeks of hearings, House Democrats finally authorized an impeachment inquiry when the full House voted to approve House Resolution 660.[155] By its terms, the Resolution did not purport to retroactively authorize investigative efforts before October 31.[156]

On November 13, HPSCI held the first of seven public hearings featuring some of the witnesses who had already testified in secret. At this stage, too, the President and his counsel were denied any opportunity to participate. HPSCI released a report on December 3, 2019.[157]

On December 4, the House Judiciary Committee held its first hearing, which featured four law professors, three of whom were selected by Democrats.[158]

The next day, December 5, Speaker Pelosi announced the outcome of the Judiciary Committee's proceedings and directed Chairman Jerrold Nadler to draft articles of impeachment.[159]

On December 9, four days after Speaker Pelosi announced that articles of impeachment would be drafted, the Judiciary Committee held its second and last hearing, which featured presentations solely from staff members from HPSCI and the Judiciary Committee.[160] The House Judiciary Committee did not hear from any fact witnesses at any time.

On December 10, Chairman Jerrold Nadler offered two articles of impeachment for the Judiciary Committee's consideration,[161] and the Committee approved the articles on December 13 on a party-line vote.[162]

On December 18, a mere 85 days after the press conference purportedly launching the inquiry, House Democrats completed the fastest presidential impeachment inquiry in history and adopted the Articles of Impeachment over bipartisan opposition.[163]

House Democrats justified their unseemly haste by claiming they had to move forward ''without delay'' because the President would allegedly ''continue to threaten the Nation's security, democracy, and constitutional system if he is allowed to remain in office.'' [164] In a remarkable reversal, however, as soon as they had voted, they decided that there was no urgency at all. House Democrats took a leisurely *four weeks* to complete the ministerial act of transmitting the articles to the Senate—more than three times longer than the entire length of proceedings before the House Judiciary Committee.

The Senate now has the ''sole Power to try'' the Articles of Impeachment transmitted by the House.[165]

THE ARTICLES SHOULD BE REJECTED AND THE PRESIDENT SHOULD IMMEDIATELY BE ACQUITTED.

I. The Articles Fail to State Impeachable Offenses as a Matter Of Law.

A. House Democrats' Novel Theory of ''Abuse of Power'' Does Not State an Impeachable Offense and Would Do Lasting Damage to the Separation of Powers

House Democrats' novel conception of ''abuse of power'' as a supposedly impeachable offense is constitutionally defective. It supplants the Framers' standard of ''high Crimes and Misdemeanors'' [166] with a made-up theory that the President can be impeached and removed from office under an amorphous and undefined standard of ''abuse of power.'' The Framers adopted a standard that requires a violation of established law to state an impeachable offense. By contrast, in their Articles of Impeachment, House Democrats have not even attempted to identify any law that was violated. Moreover, House Democrats' theory in this case rests on the radical assertion that the President could be impeached and removed from office entirely for his *subjective motives*—that is, for undertaking permissible actions for supposedly ''forbidden reasons.'' [167] That unprecedented test is so flexible it would vastly expand the impeachment power beyond constitutional limits and would permanently weaken the Presidency by effectively permitting impeachments based on policy disagreements.

House Democrats cannot salvage their unprecedented ''abuse of power'' standard with fuzzy claims that the Framers particularly intended impeachment to address ''foreign entanglements'' and ''corruption of elections.'' [168] Those assertions are makeweights that distort history and add no legitimacy to the radical theory of impeachment based on subjective motive alone.

Under the Constitution, impeachable offenses must be defined under established law. And they must be based on objective wrongdoing, not supposed subjective motives dreamt up by a hostile faction in the House and superimposed onto a President's entirely lawful conduct.

1. House Democrats' Novel Theory of ''Abuse of Power'' as an Impeachable Offense Subverts Constitutional Standards and Would Permanently Weaken the Presidency

House Democrats' theory that the President can be impeached and removed from office under a vaguely defined concept of ''abuse of power'' would vastly expand the impeachment power beyond the limits set by the Constitution and should be rejected by the Senate.

(a) House Democrats' made-up ''abuse of power'' standard fails to state an impeachable offense because it does not rest on violation of an established law

House Democrats' claim that the Senate can remove a President from office for running afoul of some ill-defined conception of ''abuse of power'' finds no support in the text or history of the Impeachment Clause. As explained above,[169] by limiting impeachment to cases of ''Treason, Bribery, or other high Crimes and Misdemeanors,'' [170] the Framers restricted impeachment to specific offenses against ''already *known and established law*.'' [171] That was a deliberate choice designed to constrain the power of impeachment.[172] Restricting impeachment to offenses established by law provided a crucial protection for the independence of the Executive from what James Madison called the ''impetuous vortex'' of legislative power.[173] As many constitutional scholars have recognized, ''the Framers were far more concerned with protecting the presidency from the encroachments of Congress . . . than they were

with the potential abuse of executive power.''[174] The impeachment power necessarily implicated that concern. If the power were too expansive, the Framers feared that the Legislative Branch may ''hold [impeachments] as a rod over the Executive and by that means effectually destroy his independence.''[175] One key voice at the Constitutional Convention, Gouverneur Morris, warned that, as they crafted a mechanism to make the President ''amenable to Justice,'' the Framers ''should take care to provide some mode that will not make him dependent on the Legislature.''[176] To limit the impeachment power, Morris argued that only ''few'' ''offences . . . ought to be impeachable,'' and the ''cases ought to be enumerated & defined.''[177]

Indeed, the debates over the text of the Impeachment Clause particularly reveal the Framers' concern that ill-defined standards could give free rein to Congress to utilize impeachment to undermine the Executive. As explained above,[178] when ''maladministration'' was proposed as a ground for impeachment, it was rejected based on Madison's concern that ''[s]o vague a term will be equivalent to a tenure during [the] pleasure of the Senate.''[179] Madison rightly feared that a nebulous standard could allow Congress to use impeachment against a President based merely on policy differences, making it function like a parliamentary no-confidence vote. That would cripple the independent Executive the Framers had crafted and recreate the Parliamentary system they had expressly rejected. Circumscribing the impeachment power to reach only existing, defined offenses guarded against such misuse of the authority.[180]

As Luther Martin, who had been a delegate at the Constitutional Convention, summarized the point at the impeachment trial of Justice Samuel Chase in 1804, ''[a]dmit that the House of Representatives have a right to impeach for acts which are not contrary to law, and that thereon the Senate may convict and the officer be removed, you leave your judges and all your other officers at the mercy of the prevailing party.''[181] The Framers prevented that dangerous result by limiting impeachment to defined offenses under the law.

House Democrats cannot reconcile their amorphous ''abuse of power'' standard with the constitutional text simply by asserting that, ''[t]o the founding generation, abuse of power was a specific, well-defined offense.''[182] In fact, they conspicuously fail to provide any citation for that assertion. Nowhere have they identified any contemporaneous definition delimiting this purportedly ''well-defined'' offense.

Nor can House Democrats shore up their theory by invoking English practice.[183] According to House Democrats, 400 years of parliamentary history suggests that the particular offenses charged in English impeachments can be abstracted into several categories of offenses, including one involving abuse of power.[184] From there, they jump to the conclusion that ''abuse of power'' itself can be treated as an offense and that any fact pattern that could be described as showing abuse of power can be treated as an impeachable offense. But that entire methodology is antithetical to the approach the Framers took in defining the impeachment power. The Framers sought to confine impeachable offenses within known bounds to protect the Executive from arbitrary exercises of power by Congress. Indeed, the Framers expressly rejected vague standards such as ''maladministration'' that had been used in England in order to constrain the impeachment power within defined limits. Deriving general categories from ancient English cases and using those categories as the labels for new, more nebulously defined purported ''offenses'' is precisely counter to the Framers' approach. As the Republican minority on the House Judiciary Committee in the Nixon impeachment inquiry explained, ''[t]he whole tenor of the Framers' discussions, the whole purpose of their many careful departures from English impeachment practice, was in the direction of limits and of standards.''[185]

House Democrats' theory also has no grounding in the history of presidential impeachments. Until now, the House of Representatives has *never* impeached a President of the United States without alleging a violation of law—indeed, a crime. The articles of impeachment against President Clinton specified charges of perjury and obstruction of justice, both felonies under federal law.[186] In the Nixon impeachment inquiry, the articles approved by the House Judiciary Committee accused the President of obstructing justice, among multiple other violations of the law.[187] And as explained above,[188] the impeachment of President Johnson provides the clearest evidence that a presidential impeachment requires alleged violations of existing law. When the House Judiciary Committee recommended impeaching Johnson in 1867 based on allegations that included no violations of law, the House rejected the recommendation.[189] A majority in the House was persuaded by the arguments of the minority on the Judiciary Committee, who argued that ''[t]he House of Representatives may impeach a civil officer, but it must be done according to law. It must be *for some offence known to the law*, and not created by the fancy of the members of the House.''[190] Congress did not impeach President Johnson until the following year, when he was impeached for violating the Tenure of Office Act.[191] The history of presidential impeachments provides no support for House Democrats' vague ''abuse of power'' charge.

(b) House Democrats' unprecedented theory of impeachable offenses defined by subjective intent alone would permanently weaken the presidency

House Democrats' conception of ''abuse of power'' is especially dangerous because it rests on the even more radical claim that a President can be impeached and removed from office solely for doing something he is allowed to do, if he did it for the ''wrong'' *subjective* reasons. Under this view, impeachment can turn entirely on ''whether the President's *real reasons*, the ones actually in his mind at the time, were legitimate.''[192] That standard is so malleable that it would permit a partisan House—like this one—to attack virtually any presidential decision by questioning a President's motives. By eliminating any requirement for wrongful conduct, House Democrats have tried to make thinking the wrong thoughts an impeachable offense.

House Democrats' theory of impeachment based on subjective motive alone is unworkable and constitutionally impermissible.

First, by making impeachment turn on nearly impossible inquiries into the subjective intent behind entirely lawful conduct, House Democrats' standard would open virtually every presidential decision to partisan attack based on questioning a President's motives. As courts have repeatedly observed, ''[i]nquiry into the motives of elected officials can be both difficult and undesirable, and such inquiry should be avoided when possible.''[193] Thus, for example, courts will not invalidate laws within Congress's constitutional authority based on allegations about legislators' motives.[194] As constitutional historian Raoul Berger has observed, this principle ''is equally applicable to executive action within statutory or constitutional limits.''[195] Even House Democrats' own expert, Professor Michael Gerhardt, has previously explained (in defending the Obama Administration against charges of abuse of power) that ''the President has the ability to . . . strongly push back against any inquiry into either the motivations or support for his actions.''[196]

The Framers did not intend to expand the impeachment power infinitely by allowing Congress to attack objectively lawful presidential conduct based solely on unwieldy inquiries into subjective intent. Under the Framers' plan, impeachment was intended to apply to *objective* wrongdoing as identified by offenses defined under existing law. As noted above, the Framers rejected maladministration as a ground for impeachment precisely because it was ''[s]o vague a term.''[197] Instead, they settled on ''high Crimes and Misdemeanors,''[198] as a term with a ''limited and technical meaning.''[199] ''[H]igh Crimes and Misdemeanors,'' as well as ''Treason'' and ''Bribery,''[200] all denote *objectively* wrongful conduct as defined by existing law. Each of the seven other references in the Constitution to impeachment also supports the conclusion that impeachments must be evaluated in terms of offenses against settled law: The Constitution refers to ''Conviction'' for impeachable offenses twice[201] and ''*Judgment* in Cases of Impeachment.''[202] It directs the Senate to ''*try* all Impeachments''[203] and requires the Chief Justice's participation when the President is ''tried.''[204] And it implies impeachable offenses are ''Crimes'' and ''Offenses'' in the Jury Trial Clause and the Pardon Clause, respectively.[205] These are all words that indicate violations of established law. The Framers' words limited the impeachment power and, in particular, sought to ensure that impeachment could not be used to attack a President based on mere policy differences.

Given their apprehensions about misuse of the impeachment power, it is inconceivable that the Framers crafted a purely intent-based impeachment standard. Such a standard would be so vague and malleable that entirely permissible actions could lead to impeachment of a President (and potentially removal from office) based solely on a hostile Congress's assessment of the President's subjective motives. If that were the rule, any President's political opponents could take virtually any of his actions, mischaracterize his motives after the fact, and misuse impeachment as a tool for political opposition instead of as a safeguard against egregious presidential misconduct.[206] As Republicans on the House Judiciary Committee during the Nixon impeachment inquiry rightly explained, ''[a]n impeachment power exercised without extrinsic and objective standards would be tantamount to the use of bills of attainder and *ex post facto* laws, which are expressly forbidden by the Constitution and are contrary to the American spirit of justice.''[207]

House Democrats justify their focus on subjective motives based largely on a cherry-picked snippet from a statement James Iredell made in the North Carolina ratification debates.[208] Iredell observed that ''the President would be liable to impeachment [if] . . . he had acted from some corrupt motive or other.''[209] But nothing in that general statement suggests that Iredell—let alone the Framers or the hundreds of delegates who ratified the Constitution in the states—subscribed to House Democrats' current theory treating impeachment as a roving license for Congress to attack a President's lawful actions based on subjective motive alone. To the contrary, in the very same speech, Iredell himself warned against the dangers of allowing impeachment based on assessments of subjective motive. He explained that there would often be divisions

between political parties and that, due to a lack of ''charity,'' each might often ''attribute every opposition'' to its own views ''to an ill motive.'' [210] In that environment, he warned, ''[a] mere difference of opinion might be interpreted, by the malignity of party, into a deliberate, wicked action.'' [211] That, he argued, should *not* be a basis for impeachment.[212]

House Democrats' assertions that past presidential impeachments provide support for their made-up impeachment-based-on-subjective-motives-alone theory are also wrong.[213] Contrary to their claims, neither the Nixon impeachment inquiry nor the impeachment of President Johnson supports their assertions.

In the Nixon impeachment inquiry, none of the articles recommended by the House Judiciary Committee was labeled ''abuse of power'' or framed the charge in those terms. And it is simply wrong to say that the theory underlying the proposed articles was that President Nixon had taken permissible actions with the wrong subjective motives. Article I alleged President Nixon obstructed justice, a clear violation of law.[214] And Article II asserted numerous breaches of the law. It claimed that President Nixon ''violat[ed] the constitutional rights of citizens,'' ''contraven[ed] the laws governing agencies of the executive branch,'' and ''authorized and permitted to be maintained a secret investigative unit within the office of the President . . . which unlawfully utilized the resources of the Central Intelligence Agency, [and] engaged in covert and unlawful activities.'' [215] Those allegations did not turn on describing permissible conduct that had simply been done with the wrong subjective motives.[216] Instead, they charged *unlawful* conduct.[217]

House Democrats' reliance on the Johnson impeachment fares no better. According to House Democrats, the Johnson impeachment supports their concocted impeachment-based-on-subjective-motives theory under the following tortured logic: The articles of impeachment actually adopted by the House charged the violation of the Tenure of Office Act.[218] But that was not the ''real'' reason the House sought to remove President Johnson. The real reason was that he had undermined Reconstruction. And, in House Democrats' view, his improper desire to thwart Reconstruction was actually a *better* reason to impeach him.[219] For support, House Democrats cite a recent book co-authored by one of their own staffers (Joshua Matz) and Laurence Tribe.[220] This is nonsense. Nothing in the Johnson impeachment involved charging the President with taking objectively permissible action for the wrong subjective reasons. Johnson was impeached for violating a law passed by Congress.[221] Moreover, President Johnson was acquitted, despite whatever subjective motives he might have had. House Democrats cannot conjure a precedent out of thin air by simply imagining that the Johnson impeachment articles said something other than what they said.[222]

If the Johnson impeachment established any precedent relevant here, it is that the House refused to impeach the President until he clearly violated the letter of the law. As one historian has explained, despite widespread anger among Republicans about President Johnson's actions undermining Reconstruction, until Johnson violated the Tenure of Office Act, ''[t]he House had refused to impeach [him] . . . at least in part because many representatives did not believe he had committed a specific violation of law.'' [223]

Second, House Democrats' theory raises particular dangers because it makes ''personal political benefit'' one of the ''forbidden reasons'' for taking government action.[224] Under that standard, a President could potentially be impeached and removed from office for taking any action with his political interests in view. In a representative democracy, however, elected officials almost *always* consider the effect that their conduct might have on the next election. And there is nothing wrong with that.

By making ''personal political gain'' an illicit motive for official action, House Democrats' radical theory of impeachment would permit a partisan Congress to remove virtually *any* President by questioning the extent to which his or her action was motivated by electoral considerations rather than the ''right'' policy motivation. None of this has any basis in the constitutional text, which specifies particular offenses as impeachable conduct. Just as importantly, under such a rule, impeachments would turn on unanswerable questions that ultimately reduce to policy disputes—exactly what the Framers saw as an impermissible basis for impeachment. For example, if it is impeachable conduct to act with *too much* of a view toward electoral results, how much of a focus on electoral results is too much, even assuming that Congress could accurately disaggregate a President's actual motives? And how does one measure presidential motives against some unknowable standard of the ''right'' policy result uninfluenced by considerations of political gain? That question, of course, quickly boils down to nothing more than a dispute about the ''right'' policy in the first place. None of this provides any permissible basis for impeaching a President.

Third, aptly demonstrating why all of this leads to unconstitutional results, House Democrats have invented standards for identifying supposedly illicit presidential motives that turn the Constitution upside down. According to House Democrats, they can show that President Trump acted with illicit motives because, in their view, the President supposedly ''disregarded United States foreign policy towards Ukraine,'' [225] ignored the ''official policy'' [226] that he had been briefed on, and ''ignored, defied, and confounded every agency within the Executive Branch'' with his decisions on Ukraine.[227] These assertions are preposterous and dangerous. They fundamentally misunderstand the assignment of power under the Constitution.

Article II of the Constitution states that ''the executive Power shall be vested in a President''—not Executive Branch staff.[228] The vesting of the Executive Power in the President makes him ''the sole organ of the nation in its external relations, and its sole representative with foreign nations.'' [229] He sets foreign policy for the Nation, and in ''this vast external realm,'' the ''President alone has the power to speak . . . as a representative of the nation.'' [230] The Constitution assigns him control over foreign policy precisely to ensure that the Nation speaks with one voice.[231] His decisions are authoritative regardless of the judgments of the unelected bureaucrats participating in an inter-agency process that exists solely to facilitate his decisions, not to make decisions for him. Any theory of an impeachable offense that turns on ferreting out supposedly ''constitutionally improper'' motives by measuring the President's policy decisions against a purported ''interagency consensus'' formed by unelected staff is a transparent and impermissible inversion of the constitutional structure.

It requires no leap of imagination to see the absurd consequences that would follow from House Democrats' theory. Imagine a President who, in an election year, determined to withdraw troops from an overseas deployment to have them home by Christmas. Should hostile lawmakers be able to seek impeachment and claim proof of ''illicit motive'' because an alleged ''interagency consensus'' showed that the ''real'' national security interests of the United States required keeping those troops in place? Manufacturing an impeachment out of such an assertion ought to be dismissed out of hand.

House Democrats' abuse-of-power theory is also profoundly anti-democratic. In assigning the Executive Power to the President, the Constitution ensures that power is exercised by a person who is democratically responsible to the people through a quadrennial election.[232] This ensures that the people themselves will regularly and frequently have a say in the direction of the Nation's policy, including foreign policy. As a result, removing a President on the ground that his foreign policy decisions were allegedly based on ''illicit motives''—because they failed to conform to a purported ''consensus'' of career bureaucrats—would fundamentally subvert the democratic principles at the core of our Constitution.

This very impeachment shows how anti-democratic House Democrats' theory really is. Millions of Americans voted for President Trump precisely because he promised to disrupt the foreign policy status quo. He promised a new, ''America First'' foreign policy that many in the Washington establishment derided. And the President has delivered, bringing fresh and successful approaches to foreign policy in a host of areas, including relations with NATO, China, Israel, and North Korea. In particular, with respect to Ukraine and elsewhere, his foreign policy has focused on ensuring that America does not shoulder a disproportionate burden for various international missions, that other countries do their fair share, and that taxpayer dollars are not squandered. House Democrats' theory that a purported inter-agency ''consensus'' among career bureaucrats can be used to show improper motive is an affront to the tens of millions of American citizens who voted for President Trump's foreign policy and not a continuation of the Washington establishment's policy preferences.

2. House Democrats' assertions that the framers particularly intended impeachment to guard against ''foreign entanglements'' and ''corruption'' of elections are makeweights that distort history

House Democrats try to shore up their made-up theory of abuse of power by pretending that anything related to what they call ''foreign entanglements'' or elections strikes at the core of impeachment.[233] This novel accounting of the concerns animating the impeachment power conveniently allows House Democrats to claim that their allegations just happen to raise the perfect storm of impeachable conduct, as if their accusations show that ''President Trump has realized the Framers' worst nightmare.'' [234] That is preposterous on its face. The Framers were concerned about the possibility of treason and the danger that foreign princes with vast treasuries at their disposal might actually buy off the Chief Executive of a fledgling, debt-ridden republic situated on the seaboard of a vast wilderness continent—most of which was still claimed by European powers eager to advance their imperial interests. Their worst nightmare was not the President of the United States-as-superpower having an innocuous conversation with the leader of a comparatively small European republic and disclosing the conversation for all Americans to see.

To peddle their distortion of history, House Democrats cobble together snippets from the Framers' discussions on various different subjects and try to portray them as if

they define the contours of impeachable offenses. As explained above, the Framers intended a limited impeachment power. But when House Democrats find the Framers raising concerns about any risks to the new government, they leap to the conclusion that those concerns must identify impeachable offenses. Such transparently results-driven historical analysis is baseless and provides no support for House Democrats' drive to remove the President.

First, House Democrats mangle history in offering ''foreign entanglements'' as a type of impeachable offense. Their approach confuses two different concepts—entangling the country in alliances and fears of foreign governments buying influence—to create a false impression that there is something insidious about anything involving a foreign connection that should make it a particularly ripe ground for impeachment.

When the Framers spoke about foreign ''entanglements'' they had a particular danger in mind. That was the danger of the young country becoming ensnared in alliances that would draw it into conflicts between European powers. When President Washington asserted that ''history and experience prove that foreign influence is one of the most baneful foes of republican government,'' he was not warning about Chief Executives meriting removal from office.[235] He was advocating for neutrality in American foreign policy, and in particular, with respect to Europe.[236] One of President Washington's most controversial decisions was establishing American neutrality in the escalating war between Great Britain and revolutionary France.[237] He then used his Farewell Address to argue against ''entangl[ing] [American] peace and prosperity in the toils of European ambition, rivalship, interest, humor [and] caprice.'' [238] Again, he was warning about the United States being drawn into foreign alliances that would trap the young country in disputes between European powers. House Democrats' false allegations here have nothing to do with the danger of a foreign entanglement as the Founders understood that term, and the admonitions from the Founding era they cite are irrelevant.[239]

The Framers were also concerned about the distinct problem of foreign attempts to *interfere* in the governance of the United States.[240] But on that score, they identified particular concerns based on historical examples and addressed them specifically. They were concerned about officials being bought off by foreign powers. Gouverneur Morris articulated this concern: ''Our Executive . . . may be bribed by a greater interest to betray his trust; and no one would say that we ought to expose ourselves to the danger of seeing the first Magistrate in foreign pay without being able to guard [against] it by displacing him.'' [241] He specifically mentioned the bribe King Louis XIV of France had paid to King Charles II of England to influence English policy.[242] This is why ''Bribery'' and ''Treason'' were made impeachable offenses. The Framers also addressed the danger of foreign inducements directed at the President by barring his acceptance of ''any present, Emolument, Office, or Title'' in the Foreign Emoluments Clause.[243] House Democrats' Articles of Impeachment make no allegations under any of these specific offenses identified in the Constitution.

In the end, House Democrats' ahistorical arguments rest on a non sequitur. They essentially argue that because the Framers showed concern about the Nation being betrayed in these specific provisions, any accusations that relate to foreign influence must equally amount to impeachable conduct. That simply does not follow. To the contrary, since the Framers made specific provisions for the types of foreign interference they feared, there is no reason to think that the Impeachment Clause must be stretched and contorted to reach *other* conduct simply because it has to do with something foreign. The Framers' approach to treason, in particular, suggests that House Democrats' logic is wrong. The Framers defined treason in the Constitution to *limit* it.[244] Nothing about their concern for *limiting* treason suggests that a general concern about foreign betrayal should be used as a ratchet to *expand* the scope of the Impeachment Clause and make it infinitely malleable so that all charges cast in the vague language of ''foreign entanglements'' should automatically state impeachable conduct.

Second, House Democrats point to the Founders' concerns that a President might bribe electors to stay in office.[245] But that specific concern does not mean, as they claim, that anything to do with an election was a central concern of impeachment and that impeachment is the tool the Framers created to deal with it. The historical evidence shows the Framers had a specific concern with presidential candidates bribing members of the Electoral College.[246] That concern was addressed by the clear terms of the Constitution, which made ''Bribery'' a basis for impeachment.[247] Nothing in House Democrats' sources suggests that simply because one grave form of corruption related to elections became a basis for impeachment, then any accusations of any sort related to elections necessarily must fall within the ambit of impeachable conduct. That is simply an invention of the House Democrats.

B. House Democrats' Charge of ''Obstruction'' Fails Because Invoking Constitutionally Based Privileges and Immunities to Protect the Separation of Powers Is Not an Impeachable Offense

House Democrats' charge of ''obstruction'' is both frivolous and dangerous. At the outset, the very suggestion that President Trump has somehow ''obstructed'' Congress is preposterous. The President has been extraordinarily transparent about his interactions with President Zelensky. Immediately after questions arose, President Trump took the unprecedented step of declassifying and releasing the full record of his July 25 telephone call, and he later released the transcript of an April 21, 2019 call as well. It is well settled that the President has a virtually absolute right to maintain the confidentiality of his diplomatic communications with foreign leaders.[248] And keeping such communications confidential is essential for the effective conduct of diplomacy, because it ensures that foreign leaders will be willing to talk candidly with the President. Nevertheless, after weighing such concerns, the President determined that complete transparency was important in this case, and he released both call records so that the American people could judge for themselves exactly what he said to the President of Ukraine. That should have put an end to this inquiry before it began. The President was not ''obstructing'' when he freely released the central piece of evidence in this case.

The President also was not ''obstructing'' when he rightly decided to defend established Executive Branch confidentiality interests, rooted in the separation of powers, against unauthorized efforts to rummage through Executive Branch files and to demand testimony from some of the President's closest advisers. As the Supreme Court has explained, the privilege protecting the confidentiality of presidential communications ''is fundamental to the operation of Government and inextricably rooted in the separation of powers under the Constitution.'' [249] For future occupants of the Office of President, it was essential for the President, like past occupants of the Office, to protect Executive Branch confidentiality against House Democrats' overreaching intrusions.

The President's proper concern for requiring the House to proceed by lawful measures and for protecting long-settled Executive Branch confidentiality interests cannot be twisted into an impeachable offense. To the contrary, House Democrats' charge of ''obstruction'' comes nowhere close to the constitutional standard. It does not charge any violation of established law. More important, it is based on the fundamentally mistaken premise that the President can be removed from office for invoking established legal defenses and immunities against defective subpoenas from House committees.

The President does not commit ''obstruction'' by asserting legal rights and privileges.[250] And House Democrats turn the law on its head with their unprecedented claim that it is ''obstruction'' for anyone to assert rights that might require the House to try to establish the validity of its subpoenas in court.[251] House Democrats' radical theories are especially misplaced where, as here, the legal principles invoked by the President and other Administration officials are critical for preserving the separation of powers—and based on advice from the Department of Justice's Office of Legal Counsel.

Treating a disagreement regarding constitutional limits on the House's authority to compel documents or testimony as an impeachable offense would do permanent damage to the Constitution's separation of powers and our structure of government. It would allow the House of Representatives to declare itself supreme and turn *any* disagreement with the Executive over informational demands into a purported basis for removing the President from office. As Professor Turley has explained, ''Basing impeachment on this obstruction theory would itself be an abuse of power . . . *by Congress*'' [252]

1. President Trump acted properly—and upon advice from the Department of Justice—by asserting established legal defenses and immunities to resist legally defective demands for information from House committees

House Democrats' purported ''obstruction'' charge is based on three actions by the President or Executive Branch officials acting under his authority, each of which was entirely proper and taken only after securing advice from OLC.

(a) Administration officials properly refused to comply with subpoenas that lacked authorization from the House

It was entirely proper for Administration officials to decline to comply with subpoenas issued pursuant to a purported ''impeachment inquiry'' before the House of Representatives had authorized any such inquiry. No House committee can issue subpoenas pursuant to the House's impeachment power without authorization from the House itself. On precisely that basis, OLC determined that all subpoenas issued before the adoption of House Resolution 660 on October 31, 2019, purportedly to advance an ''impeachment inquiry,'' were unauthorized and invalid.[253] Numerous witness subpoenas and *all* of the document subpoenas cited in Article II are invalid for this reason alone. These invalid subpoenas imposed no legal obligation on the recipients, and it was entirely lawful for the recipients not to comply with them.[254] The belated adoption of House Resolution 660 on October 31 to authorize the inquiry essentially conceded that a vote was required and did nothing to remedy the inquiry's invalid beginnings.

(i) A delegation of authority from the House is required before any committee can investigate pursuant to the impeachment power

No committee can exercise authority assigned by the Constitution to the House absent a clear delegation of authority from the House itself.[255] The Constitution assigns the ''sole Power of Impeachment''[256] to the House as a chamber—not to individual Members or subordinate units. Assessing the validity of a committee's inquiry and subpoenas thus requires ''construe[ing] the scope of the authority which the House of Representatives gave to'' the committee.[257] Where a committee cannot demonstrate that its inquiries have been authorized by an affirmative vote of the House assigning the committee authority, the committee's actions are *ultra vires*, and its subpoenas have no force.[258]

To pursue an ''impeachment inquiry,'' and to compel testimony and the production of documents for such an inquiry, the committee must be authorized to conduct an inquiry pursuant to the House's impeachment power. That power is distinct from the power to legislate assigned to Congress in Article I, Section 1. Congress's power to investigate in support of its power to legislate is limited to inquiring into topics ''on which legislation could be had.''[259] An impeachment inquiry is not subject to the same constraint. An impeachment inquiry does not aid Congress in considering legislation, but instead requires reconstructing past events to examine the conduct of specific persons. That differs from the forward-looking nature of any legislative investigation.[260] Given these differences, a committee seeking to investigate pursuant to the impeachment power must show that the House has actually authorized the committee to use that specific power.

The Speaker of the House cannot treat the House's constitutional power as her own to distribute to committees based on nothing more than her own say-so. That would exacerbate the danger of a minority faction invoking the power of impeachment to launch disruptive inquiries without any constitutional legitimacy from a majority vote in the House. It would also permit a minority to seize the House's formidable investigative powers to pursue divisive investigations for partisan purposes that a House majority might not be willing to authorize. House Democrats have not identified any credible support for their theory of authorization by press conference.[261]

(ii) Nothing in existing House rules authorized any committee to pursue an impeachment inquiry

Nothing in the House Rules adopted at the beginning of this Congress delegated authority to pursue an impeachment inquiry to any committee. In particular, Rule X, which defines each committee's jurisdiction, makes clear that it addresses only committees' ''*legislative* jurisdiction''—not impeachment.[262] Rule X does not assign any committee any authority whatsoever with respect to impeachment. It does not even mention impeachment. And that silence is not accidental. Rule X devotes more than 2,000 words to describing the committees' areas of jurisdiction in detail. The six committees that Speaker Pelosi instructed to take part in the purported impeachment inquiry here have their jurisdiction defined down to the most obscure legislative issues, ranging from the Judiciary Committee's jurisdiction over ''[s]tate and territorial boundary lines''[263] to the Oversight Committee's responsibility for ''[h]olidays and celebrations.''[264] But Rule X does not assign any committee authority regarding impeachment. Neither does Rule XI's grant of specific investigative powers, such as the power to hold hearings and to issue subpoenas. Each committee's specific investigative powers under Rule XI are restricted to Rule X's jurisdictional limits[265]—which do not include impeachment.[266]

Rule X's history confirms that the absence of any reference to ''impeachment'' was deliberate. When the House considered a number of proposals between 1973 and 1974 to transfer power from the House to committees and to remake committee jurisdiction, the House specifically rejected an initial proposal that would have added ''impeachments'' to the Judiciary Committee's jurisdiction.[267] Instead, the House amended the rules to provide standing authorization for committees to use investigatory powers only pursuant to their *legislative* jurisdiction[268] (previously, for example, a separate House vote was required to delegate subpoena authority to a particular committee for a particular topic).[269] Thus, after these amended rules were adopted, committees were able to begin investigations within their legislative jurisdiction and issue subpoenas without securing House approval, but that resolution did not authorize self-initiated impeachment inquiries. Indeed, it was precisely because ''impeachment was not specifically included within the jurisdiction of the House Judiciary Committee'' that then-Chairman Peter Rodino announced that the ''Committee on the Judiciary will have to seek subpoena power from the House'' for the Nixon impeachment inquiry.[270] The House majority, minority, and Parliamentarian, as well as the Department of Justice, all agreed on this point.[271]

(iii) More than 200 years of precedent confirm that the House must vote to begin an impeachment inquiry

Historical practice confirms the need for a House vote to launch an impeachment inquiry. Since the Founding of the Republic, the House has *never* undertaken the solemn responsibility of a presidential impeachment inquiry without first authorizing a particular committee to begin the inquiry. That has also been the House's nearly unbroken practice for every judicial impeachment for two hundred years.

In every prior presidential impeachment inquiry, the House adopted a resolution explicitly authorizing the committee to conduct the investigation before any compulsory process was used.[272] In President Clinton's impeachment, the House Judiciary Committee explained that the resolution was a constitutional requirement ''[b]ecause impeachment is delegated solely to the House of Representatives by the Constitution'' and thus ''the full House of Representatives should be involved in critical decision making regarding various stages of impeachment.''[273] As the Judiciary Committee Chairman explained during President Nixon's impeachment, an ''authoriz[ation] . . . resolution has always been passed by the House'' for an impeachment inquiry and ''is a *necessary* step.''[274] Thus, he recognized that, without authorization from the House, ''the committee's subpoena power [did] not now extend to impeachment.''[275] Indeed, with respect to impeachments of judges or lesser officers in the Executive Branch, the requirement that the full House pass a resolution authorizing an impeachment inquiry traces back to the first impeachments under the Constitution.[276]

That historical practice has continued into the modern era, in which there have been only three impeachments that did not begin with a House resolution authorizing an inquiry. Each of those three outliers involved impeachment of a lower court judge during a short interlude in the 1980s.[277] Those outliers provide no precedent for a presidential impeachment. To paraphrase the Supreme Court, ''when considered against 200 years of settled practice, we regard these few scattered examples as anomalies.''[278] In addition, as explained above,[279] ''[t]he impeachment of a federal judge does not provide the same weighty considerations as the impeachment of a president.''[280] Setting aside these three outliers, precedent shows that a House vote is required to initiate an impeachment inquiry for judges and subordinate executive officials. At least the same level of process must be used to begin the far more serious process of inquiring into impeachment of the President.

(iv) The Subpoenas Issued Before House Resolution 660 Were Invalid and Remain Invalid Because the Resolution Did Not Ratify Them

The impeachment inquiry was unauthorized and all the subpoenas issued by House committees in pursuit of the inquiry were therefore invalid. OLC reached the same conclusion.[281] The vast bulk of the proceedings in the House were thus founded on the use of unlawful process to compel testimony. Until now, House Democrats have consistently agreed that a vote by the House is required to authorize an impeachment inquiry. In 2016, House Democrats on the Judiciary Committee agreed that ''[i]n the modern era, the impeachment process begins in the House of Representatives *only* after the House has voted to authorize the Judiciary Committee to investigate whether charges are warranted.''[282] As current Judiciary Committee member Rep. Hank Johnson said in 2016, ''[t]he impeachment process *cannot begin* until the 435 Members of the House of Representatives adopt a resolution authorizing the House Judiciary Committee to conduct an independent investigation.''[283] As Chairman Nadler put it, an impeachment inquiry without a House vote is ''an obvious sham'' and a ''fake impeachment,''[284] or as House Manager Rep. Hakeem Jeffries explained, it is ''a political charade,'' ''a sham,'' and ''a Hollywood-style production.''[285]

These invalid subpoenas remain invalid today. House Resolution 660 merely directed the six investigating committees to ''continue their ongoing investigations''[286] and did not even purport to ratify retroactively the nearly two dozen invalid subpoenas issued before it was adopted,[287] as OLC has explained.[288] The House knows how to use language effectuating ratification when it wants to—indeed, it used such language less than six months ago in a resolution that ''ratifie[d] . . . all subpoenas previously issued'' by a committee.[289] The omission of anything similar from House Resolution 660 means that subpoenas issued before House Resolution 660 remain invalid, and the entire fact-gathering process pursuant to those subpoenas was *ultra vires*.

Contrary to false claims from House Democrats, the President did not ''declare[] himself above impeachment,'' reject ''any efforts at accommodation or compromise,'' or declare ''himself and his entire branch of government exempt from subpoenas issued by the House.''[290] The White House simply made clear that Administration officials should not participate in House Democrats' inquiry ''under these circumstances''—meaning a process that was unauthorized under the House's own rules and suffered from the other serious defects.[291] The President's counsel also made it clear that, if the investigating committees sought to proceed under their oversight authorities, the White House stood ''ready to engage in that process as [it] ha[s] in the past, in a manner consistent with well-established bipartisan constitutional protections.''[292] It was Chairman

Schiff and his colleagues who refused to engage in any accommodation process with the White House.

(b) The President Properly Asserted Immunity of His Senior Advisers From Compelled Congressional Testimony

The President also properly directed his senior advisers not to testify in response to subpoenas.[293] Those subpoenas suffered from a separate infirmity: they were unenforceable because the President's senior advisers are immune from compelled testimony before Congress.[294] Consistent with the long-standing position of the Executive Branch, OLC advised the Counsel to the President that those senior advisers (the Acting Chief of Staff, the Legal Advisor to the National Security Council, and the Deputy National Security Advisor) were immune from the subpoenas issued to them.[295]

Across administrations of both political parties, OLC ''has repeatedly provided for nearly five decades'' that ''Congress may not constitutionally compel the President's senior advisers to testify about their official duties.''[296] For example, President Obama asserted the same immunity for a senior adviser in 2014.[297] Similarly, during the Clinton administration, Attorney General Janet Reno opined that ''immediate advisers'' to the President are immune from being compelled to testify before Congress, and that the ''the immunity such advisers enjoy from testimonial compulsion by a congressional committee *is absolute* and may not be overborne by competing congressional interests.''[298] She explained that ''compelling one of the President's immediate advisers to testify on a matter of executive decision-making would . . . raise serious constitutional problems, *no matter what the assertion of congressional need*.''[299]

This immunity exists because senior advisers ''function as the President's alter ego.''[300] Allowing Congress to summon the President's senior advisers would be tantamount to permitting Congress to subpoena the President, which would be intolerable under the Constitution: ''Congress may no more summon the President to a congressional committee room than the President may command Members of Congress to appear at the White House.''[301]

In addition, immunity is essential to protect the President's ability to secure candid and confidential advice and have frank discussions with his advisers. It thus serves, in part, to protect the same interests that underlie Executive Privilege.[302] As the Supreme Court has explained, the protections for confidentiality embodied in the doctrine of Executive Privilege are ''fundamental to the operation of Government and inextricably rooted in the separation of powers under the Constitution.''[303] The subpoenas issued to the President's senior advisers in this inquiry necessarily implicated three core areas of Executive Privilege—presidential communications, national security and foreign policy information, and deliberative process.

First, one of the House Democrats' obvious objectives was to find out about presidential communications. The document subpoena sent to Acting White House Chief of Staff Mulvaney, for instance, sought materials reflecting the President's discussions with advisers,[304] and Chairman Schiff's report specifically identified documents that House Democrats sought, including ''briefing materials for President Trump,'' a ''presidential decision memo,'' and presidential call records.[305]

Courts have long recognized constitutional limits on Congress's ability to obtain presidential communications. As the Supreme Court has explained, executive decision-making requires the candid exchange of ideas, and ''[h]uman experience teaches that those who expect public dissemination of their remarks may well temper candor with a concern for appearances and for their own interests to the detriment of the decision-making process.''[306] Protecting the confidentiality of communications ensures the President's ability to receive candid advice.[307]

Second, there can be no dispute that the matters at issue here implicate national security and foreign policy. As Deputy National Security Adviser Kupperman has explained, House Democrats were ''seeking testimony relating to confidential national security communications concerning Ukraine.''[308] But OLC has established that ''immunity is particularly justified'' where a senior official's ''duties concern national security'' or ''relations with a foreign government''[309]—subject areas where the President's authority is at its zenith under the Constitution.[310] As the Supreme Court explained in *United States v. Nixon,* the ''courts have traditionally shown the utmost deference to Presidential responsibilities'' for foreign policy and national security, and claims of privilege in this area thus receive a higher degree of deference than invocations of ''a President's generalized interest in confidentiality.''[311]

The House's inquiry involved communications with a foreign leader and the development of foreign policy toward a foreign country. There are few areas where the President's powers under the Constitution are greater and his obligation to protect internal Executive Branch deliberations more profound.

Third, House Democrats were seeking deliberative process information. For instance, the committees requested White House documents reflecting internal deliberations about foreign aid, the delegation to President Zelensky's inauguration, and potential meetings with foreign leaders.[312] Courts have long recognized that the ''deliberative process privilege'' applies across the Executive Branch and protects ''materials that would reveal advisory opinions, recommendations and deliberations comprising part of a process by which governmental decisions and policies are formulated.''[313] The privilege prevents ''injury to the quality of agency decisions by allowing government officials freedom to debate alternative approaches in private,''[314] and the privilege has been consistently recognized by administrations of both political parties.[315]

(c) Administration officials properly instructed employees not to testify before committees that improperly excluded agency counsel

Subpoenas for testimony from other Executive Branch officials suffered from a distinct flaw. They impermissibly demanded that officials testify without agency counsel present.[316] OLC has determined that congressional committees ''may not bar agency counsel from assisting an executive branch witness without contravening the legitimate prerogatives of the Executive Branch,'' and that attempting to enforce a subpoena while barring agency counsel ''would be unconstitutional.''[317] As OLC explained, that principle applies in the context of the House's purported impeachment inquiry just as it applies in more routine congressional oversight requests.[318]

The requirement for congressional committees to permit agency counsel to attend depositions of Executive Branch officials is firmly grounded in the President's constitutional authorities ''to protect privileged information from disclosure'' and to ''control the activities of subordinate officials within the Executive Branch.''[319] As OLC has explained, without the assistance of agency counsel, an Executive Branch employee might not be able to determine when a question invaded a privileged area.[320] It is the vital role of agency counsel to ensure that constitutionally based confidentiality interests are protected. Congressional rules do not override these constitutional principles, and there is no legitimate reason for House Democrats to seek to deprive these officials of the assistance of appropriate counsel.[321]

The important role of agency counsel in congressional inquiries has been recognized by administrations of both political parties. During the Obama Administration, for instance, OLC stated that exclusion of agency counsel ''could potentially undermine the Executive Branch's ability to protect its confidentiality interests in the course of the constitutionally mandated accommodation process, as well as the President's constitutional authority to consider and assert executive privilege where appropriate.''[322]

Requiring agency counsel to be present when Executive Branch employees testify does not raise any insurmountable problems for congressional information gathering. To the contrary, as recently as April 2019, the House Committee on Oversight and Government Reform and the Trump Administration were able to work out an accommodation that satisfied both an information request and the need to have agency counsel present for an interview. In that case, after initially threatening contempt proceedings over a dispute, the late Chairman Elijah Cummings allowed White House attorneys to attend a transcribed interview of the former Director of the White House Personnel Security Office.[323] House Democrats could have eliminated a significant legal defect in their subpoenas simply by following Chairman Cummings' example. They did not take this step, so the Administration properly accepted the advice of OLC that House Democrats' actions were unconstitutional and directed witnesses not to appear without agency counsel present.

2. Asserting legal defenses and immunities grounded in the constitution's separation of powers is not an impeachable offense

House Democrats' theory that it is ''obstruction'' for the President to assert legal rights—especially rights and immunities grounded in the separation of powers—turns the law on its head and would do permanent damage to the structure of our government.

(a) Asserting Legal Defenses and Privileges Is Not ''Obstruction.''

Under fundamental principles of our legal system, asserting legal defenses cannot be labeled unlawful ''obstruction.'' In a government of laws, asserting legal defenses is a fundamental right. As the Supreme Court has explained: ''[F]or an agent of the State to pursue a course of action whose objective is to penalize a person's reliance on his legal rights is 'patently unconstitutional.' ''[324] As Harvard Law Professor Laurence Tribe correctly explained in 1998, the same basic principles apply in impeachment:

The allegations that invoking privileges and otherwise using the judicial system to shield information . . . is an abuse of power that should lead to impeachment and removal from office is not only frivolous, but also dangerous.[325]

Similarly, in 1998, now-Chairman Nadler of the House Judiciary Committee agreed that a president *cannot* be impeached for asserting a legal privilege. As he put it, ''the use of a legal privilege is not illegal or impeachable by itself, a legal privilege, executive privilege.''[326]

House Democrats, however, ran roughshod over these principles. They repeatedly threatened Executive Branch officials with obstruction charges if the officials dared to

assert legal rights against defective subpoenas. They claimed that any ''failure or refusal to comply with [a] subpoena, including at the direction or behest of the President or others at the White House, shall constitute evidence of obstruction.'' [327] Even worse, Chairman Schiff made the remarkable claim that any action ''that forces us to litigate or have *to consider* litigation, will be considered further evidence of obstruction of justice.'' [328] Those assertions turn core principles of the law inside out.

(b) House Democrats' Radical Theory of ''Obstruction'' Would Do Grave Damage to the Separation of Powers

More important, in the context of House demands for information from the Executive Branch, House Democrats' radical theory that asserting legal privileges should be treated immediately as impeachable ''obstruction'' would do lasting damage to the separation of powers.

The Legislative and Executive Branches have frequently clashed on questions of constitutional interpretation, including on issues surrounding congressional demands for information, since the very first presidential administration.[329] Such interbranch conflicts are not evidence of an impeachable offense. To the contrary, they are part of the constitutional design. The Founders anticipated that the branches might have differing interpretations of the Constitution and might come into conflict. As Madison explained, ''the Legislative, Executive, and Judicial departments . . . must, in the exercise of its functions, be guided by the text of the Constitution *according to its own interpretation of it*.'' [330] Friction between the branches on such points is part of the separation of powers at work.[331]

When the Legislative and Executive Branches disagree about their constitutional duties with respect to sharing information, the proper and historically accepted solution is not an article of impeachment. Instead, it is for the branches to engage in a constitutionally mandated accommodation process in an effort to resolve the disagreement.[332] As courts have explained, this ''[n]egotiation between the two branches'' is ''a dynamic process affirmatively furthering the constitutional scheme.'' [333]

Where the accommodation process fails, Congress has other tools at its disposal to address a disagreement with the Executive. Historically, the House has held Executive Branch officials in contempt.[334] The process of holding a formal vote of the House on a contempt resolution ensures that the House itself examines the subpoena in question and weighs in on launching a full-blown confrontation with the Executive Branch.[335] In addition, in recent times, the House of Representatives has taken the view that it may sue in court to obtain a judicial determination of the validity of its subpoenas and an injunction to enforce them.[336]

In this case, if House Democrats had actually been interested in securing information (rather than merely adding a phony count to their impeachment charge sheet), the proper course would have been to engage with the Administration in one or more of these mechanisms for resolving the interbranch conflict.[337] House Democrats rejected any effort to pursue any of these avenues. Instead, they simply announced that constitutional accommodation, contempt, and litigation were all too inconvenient for their politically driven timetable and that they must impeach the President immediately.[338]

Permitting that approach and treating the President's response to the subpoenas as an impeachable offense would do grave damage to the separation of powers. Suggesting that every congressional demand for information must automatically be obeyed on pain of impeachment would undermine the foundational premise that the Legislative and Executive Branches are coequal branches of the government, neither of which is subservient to the other. As Madison explained, where the Executive and the Legislative Branches come into conflict ''neither of them, it is evident, can pretend to an exclusive or superior right of settling the boundaries between their respective powers.'' [339] That is why the courts have insisted on an accommodations process by which the two branches work to reach a compromise in which the interest of each branch is addressed.[340] House Democrats, by contrast, have declared the House supreme not only over the Executive Branch, but also over the Judicial Branch, by baldly proclaiming that, whenever a committee chairman invokes the possibility of impeachment, the House itself is the sole judge of its own powers, because (in their view) ''the Constitution gives the House the final word.'' [341]

House Democrats' theory is unprecedented and dangerous for our structure of government. There is no reason to believe that the House, acting as judge in its own case, will properly acknowledge limits on its own powers. That is evident from numerous cases in which courts have refused to enforce congressional subpoenas because they are invalid or overbroad.[342] More important, the House Democrats' theory means that the House could dangle the threat of impeachment over every congressional demand for information. Trivializing impeachment in this manner would functionally transform our government into precisely the type of parliamentary system the Framers rejected.

In his testimony before the House Judiciary Committee, Professor Turley rightly pointed out that, by ''claiming Congress can demand any testimony or documents and then impeach any president who dares to go to the courts,'' House Democrats were advancing a position that was ''entirely untenable and abusive [of] an impeachment.'' [343] Other scholars agree. In the Clinton impeachment, for example, Professor Susan Low Bloch testified that ''impeaching a president for invoking lawful privileges is a dangerous and ominous precedent.'' [344]

In the past, the House itself has agreed and has recognized that a President cannot be impeached for asserting a privilege. For example, the House Judiciary Committee rejected as a ground for impeachment the allegation that President Clinton had ''frivolously and corruptly asserted executive privilege'' in connection with a criminal investigation.[345] Although the Committee believed that ''the President ha[d] improperly exercised executive privilege,'' [346] it nevertheless determined that this was not an ''impeachable offense[].'' [347] Similarly, over 175 years ago, the House rejected an attempt to impeach President Tyler ''for abusing his powers based on his refusals to share with the House inside details on whom he was considering to nominate to various confirmable positions and his vetoing of a wide range of Whig-sponsored legislation.'' [348]

If House Democrats' unprecedented theory of ''obstruction of Congress'' were correct, virtually every President could have been impeached. Throughout our history, Presidents have refused to share information with Congress. For example, when Congress investigated Operation Fast and Furious during the last administration, President Obama invoked Executive Privilege with respect to documents responsive to a congressional subpoena.[349] Instead of a rash rush to impeachment, House Republicans secured a favorable court ruling on President Obama's assertion of privilege.[350] President Trump's actions are entirely consistent with such steps taken by his predecessors. As Professor Turley explained, ''[i]f this Committee elects to seek impeachment on the failure to yield to congressional demands in an oversight or impeachment investigation, it will have to distinguish a long line of cases where prior presidents sought . . . [judicial] review while withholding witnesses and documents.'' [351]

House Democrats fare no better in claiming that President Trump announced a more ''categorical'' refusal to cooperate with House demands than any past president.[352] That claim misunderstands the law and misrepresents both the President's conduct and history. On the law, there is nothing impermissible about asserting rights consistently and ''categorically.'' There is no requirement for a President to cede Executive Branch confidentiality interests some of the time lest he be too ''categorical'' in their defense. On the facts, the President did not issue a categorical refusal. As noted above, the Counsel to the President made clear to House Democrats that, if they sought to pursue regular oversight, the Administration would ''stand ready to engage in that process as we have in the past, in a manner consistent with well-established bipartisan constitutional protections.'' [353] It was House Democrats who refused to engage in the accommodation process. And as for history, past Presidents—such as Presidents Truman, Coolidge, and Jackson—*did* announce categorical refusals to cooperate at all with congressional inquiries.[354] None was impeached as a result.

Contrary to House Democrats' assertions, it also makes no difference that the subpoenas here were purportedly issued as part of an impeachment inquiry.[355] The defenses and immunities the President has asserted are grounded in the separation of powers and protect confidentiality interests that are vital for the functioning of the Executive Branch. Those defenses and immunities do not disappear the instant the House opens an impeachment inquiry. Just as with the judicial need for evidence in a criminal trial, the House's interest in investigating does not mean Executive Privilege goes away; instead, ''it is necessary to resolve those competing interests in a manner that preserves the essential functions of each branch.'' [356] If anything, the interbranch conflict inherent in an impeachment inquiry *heightens* the need for scrupulous adherence to principles preserving each branch's mechanisms for protecting its own legitimate sphere of authority.

House Democrats' insistence that the Constitution assigns the House the ''sole Power of Impeachment'' [357] does nothing to advance their argument. That provision simply makes clear that the power of impeachment is assigned to the House and not anywhere else. It does not make the power of impeachment a paramount authority that sweeps away the constitutionally based privileges of other branches.[358] The fundamental Madisonian principle that each branch must place checks on the others—that ''[a]mbition must be made to counteract ambition''—continues to apply even when the House invokes the power of impeachment.[359] The mere fact that impeachment provides an ultimate check on the Executive does not mean the Framers made it a blank check for the House to expand its power without limit.

OLC has determined that Executive Privilege principles continue to apply in an impeachment inquiry.[360] And scholars agree that Presidents may assert privileges in response to demands for information in an impeachment inquiry, as Executive Privilege is ''essential to the . . . dignified conduct of the presidency and to the free flow of candid advice to the President.'' [361]

None of the excuses House Democrats have offered justifies their unprecedented leap to

impeachment while bypassing any effort either to seek constitutionally mandated accommodations or to go to court. Their claim that there was no *time* is no justification.[362] As Professor Turley has explained, ''[t]he decision to adopt an abbreviated schedule for the investigation and not to seek to compel such testimony [in court] is a strategic choice of the House leadership. It is not the grounds for an impeachment.''[363] Nor is their claim about urgency credible. The only constraint on timing here came from House Democrats' self-imposed deadline to ensure that this impeachment charade would not drag on into the Democratic primary season. They also showed no urgency when they waited four weeks to send the Articles of Impeachment to the Senate. If House Democrats had cared about constitutional precedent, they would have adhered to the ordinary timetable for something as momentous as a presidential impeachment and would have taken the time to work out disputes with the Executive Branch on subpoenas. House Democrats arbitrarily decided to skip that step.

Next, Democrats falsely claim that that ''the House has *never* before relied on litigation to compel witness testimony or the production of documents in a Presidential impeachment proceeding.''[364] But the House *has* filed such lawsuits, including just last year. In one case, the House made a court filing asserting that its impeachment inquiry entitled it to certain grand jury information on the same day the House Judiciary Committee issued its report.[365] And in another case purportedly based on an impeachment inquiry, House Democrats recently argued that, when at an impasse, disputes with the Executive Branch can ''only be resolved by the courts.''[366] These filings are flatly inconsistent with House Democrats' position here, where they claim that any impasse should lead to impeachment.

Lastly, House Democrats also find no support for their theory of ''obstruction'' in the Clinton and Nixon impeachment proceedings.[367] To the contrary, the Clinton proceedings establish conclusively that there is no plausible basis for an article of impeachment based on the assertion of rights and privileges. In 1997 and 1998, there had been numerous court rulings rejecting various assertions of Executive Privilege by President Clinton.[368] The House Judiciary Committee concluded that Clinton's assertions of Executive Privilege were frivolous, especially because they related to ''purely private'' matters—not official actions.[369] Nevertheless, the Committee decided that the assertions of privilege did not constitute an ''impeachable offense[].''[370]

Nothing from the Nixon impeachment proceedings supports House Democrats either. The record there included evidence that, as part of efforts to cover up the Watergate break-in, the President had (among other things): provided information from the Department of Justice to subjects of criminal investigations to help them evade justice; used the FBI, Secret Service, and Executive Branch personnel to conduct illegal electronic surveillance; and illegally attempted to secure access to tax return information in order to influence individuals.[371] Moreover, the Committee had transcripts of tapes on which the President discussed asserting privileges, not to protect governmental decision making, but solely to stymie the investigation into the break-in.[372] It was only in that context that the House Judiciary Committee narrowly recommended an article of impeachment asserting that President Nixon had ''failed without lawful cause or excuse to produce papers and things'' sought by Congress.[373] There is nothing remotely comparable in this case. Among other things, every step the Trump Administration has taken has been well-founded in law and supported by the opinion of the Department of Justice. Moreover, the subpoenas here attempted to probe into matters involving the conduct of foreign relations—matters squarely at the core of Executive Privilege where the President's powers and need to preserve confidentiality are at their apex.

(c) The President cannot be removed from office based on a difference in legal opinion

House Democrats' reckless ''obstruction'' theory is further flawed because it asks the Senate to remove a duly elected President from office based on differences of legal opinion in which the President acted on the advice of OLC. As explained above, the Framers restricted impeachment to remedy solely egregious conduct that endangers the constitutional structure of government. No matter how House Democrats try to dress up their claim, a difference of legal opinion over an assertion of grounds to resist subpoenas does not rise to that level. The Framers themselves recognized that differences of opinion could not justify impeachment. As Edmund Randolph explained in the Virginia ratifying convention, ''[n]o man ever thought of impeaching a man for an opinion.''[374]

Until now, that principle has prevailed, as the House has expressly rejected attempts to impeach presidents based on legal disputes over assertions of privilege. As noted above, in the Clinton impeachment, the House Judiciary Committee rejected a draft article alleging that President Clinton had ''frivolously and corruptly asserted executive privilege.''[375] Even though the Committee concluded that ''the President ha[d] improperly exercised executive privilege,''[376] it decided that this was not an ''impeachable offense[].''[377] The Committee concluded it did not have ''the ability to second guess the rationale behind the President or what was in his mind in asserting that executive privilege'' and it ''ought to give . . . the benefit of the doubt [to the President] in the assertion of executive privilege.''[378] As the Committee recognized, members of Congress need not agree that a President's assertion of a privilege or immunity is correct to recognize that making the assertion of legal privileges itself an impeachable offense is a dangerous and unwarranted step.

The House took a similar view in rejecting an attempt to impeach President Tyler in 1843 when he refused congressional demands for information. As Professor Gerhardt has explained:

Tyler's attempts to protect and assert what he regarded as the prerogatives of his office *were a function of his constitutional and policy judgments*; they might have been wrong-headed or even poorly conceived (at least in the view of many Whigs in Congress), but they were not malicious efforts to abuse or expand his powers. . . .[379]

President Trump's resistance to congressional subpoenas here was similarly ''a function of his constitutional and policy judgments.'' As the House recognized in the cases of President Tyler and President Clinton, divergent views on such matters cannot possibly be sufficient to remove a duly elected president from office. And that is especially the case here, where President Trump's actions were expressly based on advice from the Department of Justice.

II. The Articles Resulted from an Impeachment Inquiry that Violated All Precedent and Denied the President Constitutionally Required Due Process.

Three defects make the House's purported impeachment inquiry irredeemably flawed. *First*, as the Department of Justice advised at the time, the House's investigating committees compelled testimony and documents by issuing subpoenas that were invalid when issued and are invalid today. *See* Parts I.B.1(a), II.A. *Second*, the impeachment inquiry failed to provide due process to the President as required by the Constitution. *See* Part II.B. Contrary to 150 years of precedent, the House excluded the President from the process, denying him any right to participate or defend himself. House Democrats only pretended to provide the President any rights *after* the entire factual record had been compiled in *ex parte* hearings and *after* Speaker Pelosi had predetermined the result by instructing the Judiciary Committee to draft articles of impeachment. *Third*, the House's factual investigation was supervised by an interested fact witness, Chairman Schiff, who—after falsely denying it—admitted that his staff had been in contact with the whistleblower and had given him guidance. *See* Part II.C. These three fundamental errors infected the underpinnings of this trial, and the Senate cannot constitutionally rely upon House Democrats' tainted record to reach any verdict other than acquittal. *See* Part II.D. Nor is it the Senate's role to give House Democrats a ''do-over'' to develop the record anew in the Senate. These errors require rejecting the Articles and acquitting the President.

A. The Purported Impeachment Inquiry Was Unauthorized at the Outset and Compelled Testimony Based on Nearly Two Dozen Invalid Subpoenas

It is emblematic of the rush to judgment throughout the House's slap-dash impeachment inquiry that Chairman Schiff's investigating committees began issuing subpoenas and compelling testimony when they plainly had no authority to do so. The House committees built their one-sided record by purporting to compel testimony and documents using nearly two dozen subpoenas ''[p]ursuant to the House of Representatives' impeachment inquiry.''[380] But their only authority was Speaker Pelosi's announcement at a press conference on September 24, 2019. As a result, the inquiry and the almost two dozen subpoenas issued before October 31, 2019 came *before* the House delegated any authority under its ''sole Power of Impeachment'' to any committee.[381] As OLC summarized:

The Constitution vests the ''sole Power of Impeachment'' in the House of Representatives. U.S. Const. art. I, §2, cl. 5. For precisely that reason, the House itself must authorize an impeachment inquiry, as it has done in virtually every prior impeachment investigation in our Nation's history, including every one involving a President. A congressional committee's ''right to exact testimony and to call for the production of documents'' is limited by the ''controlling charter'' the committee has received from the House. *United States v. Rumely*, 345 U.S. 41, 44 (1953). Yet the House, by its rules, has authorized its committees to issue subpoenas only for matters within their *legislative* jurisdiction. Accordingly, no committee may undertake the momentous move from legislative oversight to impeachment without a delegation by the full House of such authority.[382]

Thus, as explained above, all subpoenas issued before the adoption of House Resolution 660 on October 31, 2019, purportedly to advance an ''impeachment inquiry,'' were unauthorized and invalid.

B. House Democrats' Impeachment Inquiry Deprived the President of the Fundamentally Fair Process Required by the Constitution

The next glaring defect in House Democrats' impeachment proceedings was the wholly unfair procedures used to conduct the

inquiry and compile the record. The Constitution requires that something as momentous as impeaching the President be done in a fundamentally fair way. Both the Due Process Clause and separation of powers principles require the House to provide the President with fair process and an opportunity to defend himself. Every modern presidential impeachment inquiry—and every impeachment investigation for the last 150 years—has expressly preserved the accused's rights to a fundamentally fair process and ensured a balanced development of the evidence. These included the rights to cross-examine witnesses, to call witnesses, to be represented by counsel at all hearings, to make objections relating to the examination of witnesses or the admissibility of evidence, and to respond to evidence and testimony received. There is no reason to think that the Framers designed a mechanism for the profoundly disruptive act of impeaching the President that could be accomplished through any unfair and arbitrary means that the House might invent.[383]

1. The Text and Structure of the Constitution Demand that the House Ensure Fundamentally Fair Procedures in an Impeachment Inquiry

(a) The Due Process Clause Requires Fair Process

The federal Due Process Clause broadly states that ''[n]o person shall . . . be deprived of life, liberty, or property, without due process of law''[384] and applies to every part of the federal government. In any proceeding that may lead to deprivation of a protected interest, it requires fair procedures commensurate with the interests at stake.[385] There is no exemption from the clause for Congress. Thus, for example, the Supreme Court has held that due process protections apply to congressional investigations and provide witnesses in such investigations certain rights.[386] Congress's ''power to investigate, broad as it may be, is also subject to recognized limitations''—including those ''found in the specific individual guarantees of the Bill of Rights.''[387] It would be anomalous if the Due Process Clause applied to investigations conducted under Congress's legislative power—which aim merely to gather information for legislation—but somehow did not apply to impeachment investigations aimed at stripping individuals of their government positions. An impeachment investigation against the President potentially seeks to charge the President with ''Treason, Bribery, or other high Crimes and Misdemeanors,''[388] and to strip the President of both (1) his constitutionally granted right to ''hold his Office during the Term of Four years,''[389] and (2) his eligibility to ''hold and enjoy any Office of honor, Trust or Profit under the United States,''[390] including to be re-elected as President.[391]

Those actions plainly involve deprivations of property and liberty interests protected by the Due Process Clause.[392] As a threshold matter, it is settled law that even the lowest level ''public employees who can be discharged only for cause have a constitutionally protected property interest in their tenure and cannot be fired without due process.''[393] Nothing in the Constitution suggests that the impeachment process for addressing charges crossing the extraordinarily high threshold of ''Treason, Bribery, or other high Crimes and Misdemeanors''[394] should involve *less* fair process than what the Constitution requires for every lower-level federal employee. The Constitution also explicitly gives the President (and every individual) a protected liberty interest in eligibility for election to the Office of President—so long as the individual meets the qualifications established by the Constitution.[395] Finally, every federal officer has a protected liberty interest in his reputation that would be directly impaired by impeachment charges.[396] Impeachment by the House alone has an impact warranting the protections of due process.[397] The House's efforts to deprive the President of these constitutionally protected property and liberty interests necessarily implicate the Due Process Clause. The fact that impeachment is a constitutionally prescribed mechanism for removing federal officials from office does not make it any the less a mechanism affecting rights within the ordinary ambit of the clause.

The gravity of the deprivation at stake in an impeachment—especially a presidential impeachment—buttresses the conclusion that some due process limitations must apply. It would be incompatible with the Framers' understanding of the ''delicacy and magnitude of a trust which so deeply concerns the political reputation and existence of every man engaged in the administration of public affairs''[398] to think that they envisioned a system in which the House was free to devise any arbitrary or unfair mechanism it wished for impeaching individuals. The Supreme Court has described due process as ''the protection of the individual against arbitrary action.''[399] There is no reason to think that protection was not intended to extend to impeachments.

Similarly, the momentous impact of a presidential impeachment on the operation of the government suggests that the drafters of the Constitution expected the process to be governed by procedures that would ensure a fair assessment of evidence. The Bill of Rights guarantees due process, not out of an abstract, academic interest in process as an end in itself, but rather due to a belief, deeply rooted in the Anglo-American system of law, that procedural protections reduce the chances of erroneous decision-making.[400] The Framers surely did not intend to approve a process for determining impeachments that would be wholly cut loose from all traditional mechanisms deemed essential in our legal heritage for discovering the truth.

The sole judicial opinion to reach the question held that the Due Process Clause applies to impeachment proceedings.[401] In *Hastings* v *United States,* the district court held that the Due Process Clause imposes an independent constitutional constraint on how the Senate exercises its ''sole Power to try all Impeachments.''[402] In 1974, the Department of Justice suggested the same view, opining that ''[w]hether or not capable of judicial enforcement, due process standards would seem to be relevant to the manner of conducting an impeachment proceeding'' in the House—including ''the ability of the President to be represented at the inquiry of the House Committee, to cross-examine witnesses, and to offer witnesses and evidence,'' completely separate from the trial in the Senate.[403]

(b) The Separation of Powers Requires Fair Process

A proper respect for the head of a co-equal branch of the government also requires that the House use procedures that are not arbitrary and that are designed to permit the fair development of evidence. The Framers intended the impeachment power to be limited to ''guard[] against the danger of persecution, from the prevalency of a factious spirit.''[404] The Constitution places the power of impeachment in the entire House precisely to ensure that a majority of the elected representatives of the people decide to move an impeachment forward. That design would be undermined if a House vote were shaped by an investigatory process so lopsided that it effectively empowered only one faction to develop evidence and foreclosed the ability of others—including the accused—to develop the facts. Rather than promoting deliberation by a majority of the people's representatives, that approach would foster precisely the factionalism that the Framers foresaw as one of the greatest dangers in impeachments. ''By forcing the House and Senate to act as tribunals rather than merely as legislative bodies, the Framers infused the process with notions of due process to prevent impeachment from becoming a common tool of party politics.''[405]

The need for fair process as a reflection of respect for the separation of powers is further buttressed by the unique role of the President in the constitutional structure. As explained above,[406] ''presidential impeachments are qualitatively different from all others'' because they overturn a national election and risk grave disruption of the government.[407] It is unthinkable that a process carrying such grave risks for the Nation should not be regulated by any constitutional limits. And the need for fair process is even more critical where, as here, impeachment turns on how the President has exercised authorities within his exclusive constitutional sphere. The President is ''the constitutional representative of the United States in its dealings with foreign nations.''[408] Preserving the President's ability to carry out this constitutional function requires that he be provided fair process and an opportunity to defend himself in any investigation into how he has exercised his authority to conduct foreign affairs. Otherwise, a partisan faction could smear the President with one-sided allegations with no opportunity for the President to respond. That would threaten to ''undermine the President's capacity'' for ''effective diplomacy'' and ''compromise the very capacity of the President to speak for the Nation with one voice in dealing with other governments.''[409]

(c) The House's Sole Power of Impeachment and Power to Determine Rules of Its Own Proceedings Do Not Eliminate the Constitutional Requirement of Due Process

Nothing in the House's ''sole Power of Impeachment''[410] and power to ''determine the Rules of its Proceedings''[411] undermines the House's obligation to use fundamentally fair procedures in impeachment. Those provisions simply mean that the House, and no other entity, has these powers. The Supreme Court has made clear that independent constitutional constraints limit otherwise plenary powers committed to one of the political branches.[412] For example, even though ''[t]he [C]onstitution empowers each house to determine its rules of proceedings,'' each House ''may not by its rules ignore constitutional restraints or violate fundamental rights.''[413] Similarly, the doctrine of Executive Privilege, which is rooted in the separation of powers, constrains Congress's exercise of its constitutionally assigned powers. A congressional committee cannot simply demand access to information protected by Executive Privilege. Instead, if it can get access to such information at all, it must show that the information ''is demonstrably critical to the responsible fulfillment of the Committee's functions.''[414] The House could not evade that constraint by invoking its plenary authority to ''determine the Rules of its Proceedings''[415] and adopting a rule allowing its committees to override Executive Privilege.[416] Executive Privilege, which is itself grounded in the Constitution, similarly constrains the House's ability to demand information pursuant to its ''sole Power of Impeachment.''[417]

Nixon v. *United States,* in any case, does not suggest otherwise.[418] Nixon addressed whether the use of a committee to take evidence in a Senate impeachment trial violated the direction in the Constitution that the Senate

shall have ''sole Power to try all Impeachments.'' [419] The Court held that the challenge presented a non-justiciable political question [420]—specifically, that ''*[i]n the case before us,* there is no separate provision of the Constitution that could be defeated by allowing the Senate final authority to determine the meaning of the word 'try' in the Impeachment Trial Clause.'' [421] But Nixon did not hold that *all* questions related to impeachment are non-justiciable [422] or that there are no constitutional constraints on impeachment. To the contrary, the Court ''agree[d] with Nixon that courts possess power to review either legislative or executive action that transgresses identifiable textual limits,'' but merely concluded ''that the word 'try' in the Impeachment Trial Clause does not provide an identifiable textual limit on the authority which is committed to the Senate.'' [423] More importantly, the justiciability of such questions is irrelevant. Constitutional obligations need not be enforceable by the judiciary to exist and constrain the political branches. As Madison explained, ''as the Legislative, Executive, and Judicial departments of the United States are co-ordinate, and each equally bound to support the Constitution, it follows that each must in the exercise of its functions, be guided by the text of the Constitution according to its own interpretation of it.'' [424] Particularly in the impeachment context, ''we have to divest ourselves of the common misconception that constitutionality is discussable or determinable only in the courts, and that anything is constitutional which a court cannot or will not overturn. . . . Congress's responsibility to preserve the forms and the precepts of the Constitution is greater, rather than less, when the judicial forum is unavailable, as it sometimes must be.'' [425] A holding that a particular question is a non-justiciable political question leaves that question to the political branches to use ''nonjudicial methods of working out their differences'' [426] and does not relieve the House of its constitutional obligation.

2. The House's Consistent Practice of Providing Due Process in Impeachment Investigations for the Last 150 Years Confirms that the Constitution Requires Due Process

Historical practice provides a gloss on the requirements of the Constitution and strongly confirms that House impeachment investigations must adhere to basic forms of due process. ''In separation-of-powers cases, th[e] [Supreme] Court has often put significant weight upon historical practice.'' [427] As James Madison explained, it ''was foreseen at the birth of the Constitution, that difficulties and differences of opinion might occasionally arise in expounding terms [and] phrases necessarily used in such a charter . . . and that it might require a regular course of practice to liquidate [and] settle the meaning of some of them.'' [428] The Constitution ''contemplates that practice will integrate the dispersed powers [of the federal government] into a workable government.'' [429] The Supreme Court has thus explained that historical practice reflects ''an admissible view of the Constitution,'' [430] and ''consistent congressional practice requires our respect.'' [431] Although constitutional requirements governing House impeachment proceedings may have been unsettled when the Constitution was adopted, by the 1870s consistent practice in the House (unbroken since then) gave meaning to the Constitution and settled the minimum procedures that must be afforded for a fair impeachment inquiry.

The Framers, who debated impeachment with reference to the contemporaneous English impeachment of Warren Hastings,[432] knew that ''the House of Commons did hear the accused, and did permit him to produce testimony, before they voted an impeachment against him.'' [433] And practice in the United States rapidly established that the accused in an impeachment must be allowed fair process. Although a few early impeachment investigations were *ex parte,*[434] the House provided the accused with notice and an opportunity to be heard in the majority of cases starting as early as 1818.[435]

By Judge Peck's impeachment in 1830, House Members, explicitly acknowledging that ''it was obvious that it had not yet been settled by precedent,'' had an extensive debate to ''settle[]'' ''[t]he practice in cases of impeachments, so far as regards the proceedings in this House.'' [436] Judge Peck had asked for the House to give him the ability to submit a ''written exposition of the whole case, embracing both the facts and the law, and give him, also, process to call his witnesses from Missouri in support of his statements.'' [437] The Judiciary Committee Chairman, James Buchanan, pointed out that ''in the case of Warren Hastings'' in England, ''the House of Commons did hear the accused, and did permit him to produce testimony, before they voted an impeachment against him.'' [438] Mr. Ingersoll explained that, in a prior impeachment inquiry against Vice President Calhoun, ''a friend of the Vice President had been permitted to appear, and represent him throughout the whole investigation,'' that ''[w]itnesses, also, had been examined on the part of the accused,'' and that ''witnesses in favor of the Vice President had been examined, as well as against him, and that his representative had been allowed to present before the committee through every stage of the examination.'' [439] He noted that ''[t]he committee at that time took some pains to ascertain what was the proper mode of proceeding, and they became satisfied that the party accused had, in these preliminary proceedings, a *right* to be thus heard.'' [440] Mr. Pettis similarly concluded that ''[t]he request of the Judge is supported by the whole train of English decisions in cases of a like kind'' and that he should be given those rights here as well.[441] The debate was thus settled in favor of due process rights for Judge Peck.[442]

By at least the 1870s, despite some unsettled practice in the interim, the House Judiciary Committee concluded that an opportunity for the ''accused by himself and his counsel [to] be heard'' had ''become the *established practice* of the [Judiciary Committee] in cases of impeachment'' and thus ''deemed it *due to the accused* that he should have'' due process.[443] That ''established practice'' has been followed in every House impeachment investigation for the past 150 years [444] and has provided a fixed meaning for the constitutional requirements governing House impeachment proceedings.[445] The fact that the House has not followed a perfectly consistent practice dating all the way back to 1789, or that there were early outliers, is irrelevant.[446]

The House's Parliamentarian acknowledges that while ''the committee sometimes made its inquiry *ex parte*'' in ''earlier practice'' before the 1870s, the practice dating to the 1870s ''is to permit the accused to testify, present witnesses, cross-examine witnesses, and be represented by counsel.'' [447] Current House Democrats are already on record agreeing that due process protections apply in the House's impeachment inquiries. Chairman Nadler has admitted that ''[t]he power of impeachment is a solemn responsibility, assigned to the House by the Constitution,'' and ''[t]hat responsibility demands a rigorous level of due process.'' [448] He has rightly acknowledged, expressly in the context of impeachment, that ''[t]he Constitution guarantees the right of anyone who is accused of any wrongdoing, and fundamental fairness guarantees the right of anyone, to have the right to confront the witness against him.'' [449] Rep. Hank Johnson—a current Judiciary Committee member—has similarly recognized that ''[t]here is a reason for a careful process when it comes to the most drastic action of impeachment; it is called due process.'' [450]

The two modern presidential impeachment inquiries also abundantly confirm the due process protections that apply to the accused in an impeachment inquiry. In fact, every President who has asked to participate in an impeachment investigation has been afforded extensive rights to do so.[451] The House Judiciary Committee adopted explicit procedures to provide Presidents Clinton and Nixon with robust opportunities to defend themselves, including the rights ''to attend all hearings, including any held in executive session''; ''respond to evidence received and testimony adduced by the Committee''; ''submit written requests'' for ''the Committee to receive additional testimony or other evidence''; [452] ''question any witness called before the Committee''; and raise ''[o]bjections relating to the examination of witnesses, or to the admissibility of testimony and evidence.'' [453] President Clinton was given access to the grand-jury evidence that underpinned the Starr report.[454] The Committee also ensured that the minority could fully participate in the investigation and hearings, including by submitting evidence, objecting to witness examination and evidence, and exercising co-equal subpoena authority to issue a subpoena subject to overruling by the full Committee.[455] Both Presidents were thus able to present robust defenses before the Committee.[456] Indeed, President Clinton's counsel gave an opening statement, the President called 14 expert witnesses over two days, and the President's counsel also gave a closing statement [457] and cross-examined the witnesses, including ''question[ing] Judge Starr for an hour.'' [458] In this impeachment inquiry, the House Intelligence Committee fulfilled the investigatory role that the House Judiciary Committee filled in prior impeachments, and thus, these rights should have been available in the proceedings before the Intelligence Committee.

3. The President's Counsel Must Be Allowed To Be Present at Hearings, See and Present Evidence, and Cross-Examine All Witnesses

The exact contours of the procedural protections required during an impeachment investigation must, of course, be adapted to the nature of that proceeding. The hallmarks of a full blown trial are not required, but procedures must reflect, at a minimum, basic protections that are essential for ensuring a fair process that is designed to get at the truth.

The Supreme Court's ''precedents establish the general rule that individuals must receive notice and an opportunity to be heard *before* the Government deprives them'' of a constitutionally protected interest.[459] That means, at a minimum, that the evidence must be disclosed to the accused, and the accused must be permitted an opportunity to test and respond to the evidence—particularly through ''[t]he rights to confront and cross-examine witnesses,'' which ''have long been recognized as essential to due process.'' [460] For 250 years, ''the policy of the Anglo-American system of evidence has been to regard the necessity of testing by cross-examination as a vital feature of the law.'' [461] Cross-examination is ''the greatest legal engine ever invented for the discovery of

truth,'' [462] ''shed[ding] light on the witness' perception, memory and narration'' [463] and ''expos[ing] inconsistencies, incompleteness, and inaccuracies in his testimony.'' [464] Thus, ''[i]n almost every setting where important decisions turn on questions of fact, due process requires an opportunity to confront and cross-examine adverse witnesses.'' [465] It is unthinkable that the Framers, steeped in the history of Anglo-American jurisprudence, would create a system that would allow the Chief Executive and Commander-in-Chief of the armed forces to be impeached based on a process that developed evidence without providing any of the elementary procedures that the common law developed over centuries for ensuring the proper testing of evidence in an adversarial process.

The most persuasive source indicating what the Constitution requires in an impeachment investigation is the record of the House's own past practice, as explained above.[466] The due process rights consistently afforded by the House to the accused for the past 150 years have generally included the right to appear and to be represented by counsel at all hearings, to have access to and respond to the evidence, to submit evidence and testimony, to question witnesses and object to evidence, and to make opening statements and closing arguments.[467] Chairman Nadler, Chairman Schiff, other House Democrats, and then-Representative Schumer have repeatedly confirmed these procedural requirements.[468]

4. The House Impeachment Inquiry Failed to Provide the Due Process Demanded by the Constitution and Generated a Fundamentally Skewed Record That Cannot Be Relied Upon in the Senate

Despite clear precedent mandating due process for the accused in any impeachment inquiry—and especially in a presidential impeachment inquiry—House Democrats concocted a wholly unprecedented three-stage process in this case that denied the President fair process at every step of the way. Indeed, because the process started without any actual authorization from the House, committees initially made up the process as they went along. In the end, all three phases of the House's inquiry failed to afford the President even the most rudimentary procedures demanded by the Constitution, fundamental fairness, and over 150 years of precedent.

(a) Phase I: Secret Hearings in the Basement Bunker

The first phase involved secret proceedings in a basement bunker where the President was not given any rights at all. This phase consisted of depositions taken by joint hearings of the House Permanent Select Committee on Intelligence (HPSCI), the House Committee on Foreign Affairs, and the House Committee on Oversight and Reform. To ensure there would be no transparency for the President or the American people, depositions were conducted in a facility designed for securing highly classified information—even though *all* of the depositions were ''conducted entirely at the unclassified level.'' [469] The President was denied any opportunity to participate. He was denied the right to have counsel present. He was denied the right to cross-examine witnesses, call witnesses, and present evidence. He was even denied the right to have Executive Branch counsel present during depositions of Executive Branch officials, thereby undermining any ability for the President to protect longstanding constitutional privileges over Executive Branch information.[470] Members in the Republican minority on the investigating committees could not provide a counterweight to remedy the lack of process for the President. They were denied subpoena authority to call witnesses, and they were blocked even from asking questions that would ensure a balanced development of the facts. For example, Chairman Schiff repeatedly shut down any line of questioning that would have exposed personal self-interest, prejudice, or bias of the whistleblower.[471]

Finally, House Democrats made clear that the proceedings' secrecy was just a partisan stratagem. Daily leaks describing purported testimony of witnesses were calculated to present the public with a distorted view of what was taking place behind closed doors and further the narrative that the President had done something wrong.[472]

House Democrats' assertions that the basement Star Chamber hearings were justified because the House ''serves in a role analogous to a grand jury and prosecutor'' [473] are baseless. The House's unbroken practice of providing due process over the last 150 years confirms that the House is not merely a grand jury.[474] Chairman Nadler, other House Democrats, and then-Representative Schumer rejected such analogies as a ''cramped view of the appropriate role of the House [that] finds no support in the Constitution and is completely contrary to the great weight of historical precedent.'' [475] The Judiciary Committee's own impeachment consultant and staff have rejected ''[g]rand jury analogies'' as ''badly misplaced when it comes to impeachment.'' [476]

More importantly, the narrow rationales that justify limiting procedural protections in grand juries simply do not apply here.[477] For example, it is primarily grand jury secrecy—not the preliminary nature of grand jury proceedings in developing the basis for a charge—that ''justif[ies] the limited procedural safeguards available to . . . persons under investigation.'' [478] That secrecy, in turn, promotes two primary objectives. It allows an investigation to proceed without notice to those under suspicion and thus may further the investigation.[479] In addition, a ''cornerstone'' of grand jury secrecy is the policy of protecting the public reputations of those who may be investigated but never charged.[480]

Neither rationale applied to Chairman Schiff's proceedings for a straightforward reason: in relevant respects, the proceedings were entirely public. Chairman Schiff made no secret that the target of his investigation was President Trump. He and his colleagues held news conferences to announce that fact, and they leaked information intended to damage the President from their otherwise secret hearings.[481] In addition, the exact witness list with the dates, times, and places of witness testimony were announced to the world long in advance of each hearing. And witnesses' opening statements, as well as slanted summaries of their testimony, were selectively leaked to the press in real time. The entire direction of the investigation, as well as specific testimony, was thus telegraphed to the world. These acts would have violated federal criminal law if grand jury rules had applied.[482]

It is also well settled that the one-sided procedures employed by Chairman Schiff were not designed to be the best mechanism for getting at the truth. Grand jury procedures have never been justified on the theory that they are well adapted for uncovering ultimate facts. To the contrary, as explained above, the Anglo-American legal system has long recognized that ''adversarial testing,'' particularly cross-examination, ''will ultimately advance the public interest in truth and fairness.'' [483] Those essential procedural rights are no less necessary in impeachment proceedings unless one adopts the counterintuitive assumption that the Framers did not intend an impeachment inquiry to use any of the familiar mechanisms developed over centuries in the common law to get at the truth.

(b) Phase II: The Public, *Ex Parte* Show Trial Before HPSCI

After four weeks of secret—and wholly unauthorized—hearings, House Democrats finally introduced a resolution to have the House authorize an impeachment inquiry and to set procedures for it. House Resolution 660, however, merely compounded the fundamentally unfair procedures from the secret cellar hearings by subjecting the President to a *second* round of *ex parte* hearings before Chairman Schiff's committee. The only difference was that this second round took place in public.[484] Thus, after screening witnesses' testimony behind closed doors, Chairman Schiff moved on to a true show trial—a stage-managed inquisition in front of the cameras, choreographed with pre-screened testimony to build a narrative aiming at a pre-determined result. The President was *still* denied any opportunity to participate, to cross-examine witnesses, to present witnesses or evidence, or to protect constitutionally privileged Executive Branch information by having agency counsel present. All of this was directly contrary to the rules that had governed the Nixon and Clinton impeachment inquiries. There, the President had been allowed to cross-examine *any* fact witnesses called by the committee.[485] In addition, the President had been permitted to call witnesses, and the ranking member on the investigating committee had been permitted co-equal subpoena authority.[486]

(c) Phase III: The Ignominious Rubber Stamp from the Judiciary Committee

The House Committee on the Judiciary simply rubber-stamped the ex parte record compiled by Chairman Schiff and, per the Speaker's direction, relied on it to draft articles of impeachment. Under House Resolution 660, it was only during this third phase that the President was even nominally allowed a chance to participate and some rudimentary elements of process.[487] With fact-finding already over, there was no meaningful way to allow the President to use those rights for a balanced factual inquiry. Instead, the Judiciary Committee doubled down on using the skewed, one-sided record developed by Chairman Schiff. Thus, the only procedural protections that House Resolution 660 provided the President were inadequate from the outset because they came far too late in the proceedings to be effective. Procedural protections such as cross-examination are essential *as the factual record is being developed*. Providing process only *after* the record has been compiled and *after* charges are being drafted can do little to remedy the distortions built into the record. Here, most witnesses testified *twice* under oath on the same topics—once in a secret rehearsal to preview their testimony, and again in public—without any cross-examination by the President's counsel. Locking witnesses into their stories by having them testify twice vastly reduces the benefit of cross-examination. Any deviation from prior testimony potentially exposes a witness to a double perjury charge, and, worse, the prior *ex parte* testimony becomes fixed in each witness's mind in place of actual memory.

While it would have been next to impossible for a proceeding before the Judiciary Committee to remedy the defects in the prior two rounds of hearings, Chairman Nadler had no interest in even attempting to do that. His only interest was following marching orders to report articles of impeachment to the House so they could be voted on before Christmas. Thus, he repeatedly provided vague and inadequate notice about what proceedings were planned until he ultimately

informed the President that he had no plans for any evidentiary hearings at all.

For example, on November 26, 2019—two days before Thanksgiving—Chairman Nadler informed the President and the Ranking Member that the Judiciary Committee would hold a hearing on December 4 vaguely limited to ''the historical and constitutional basis of impeachment.'' [488] The Chairman provided no further information about the hearing, including the identities of the witnesses, but nonetheless required the President to indicate whether he wished to participate by Sunday, December 1. Every aspect of the planning for this hearing departed from the Clinton and Nixon precedents. The Committee afforded the President no scheduling input, no meaningful information about the hearing, and so little time to prepare that it effectively denied the Administration a fair opportunity to participate. The Committee ultimately announced the identities of the witnesses less than two days before the hearing.[489] For a similar hearing with scholars in the Clinton impeachment, the Committee provided two-and-a-half weeks' notice to prepare and scheduled the hearing on a date suggested by the President's attorneys.[490] President Trump understandably declined to participate in that biased constitutional law seminar because he could not ''fairly be expected to participate in a hearing while the witnesses are yet to be named and while it remains unclear whether the Judiciary Committee will afford the President a fair process through additional hearings.'' [491]

Meanwhile, in a separate letter on November 29, 2019, Chairman Nadler asked the President to specify, by December 6, how he would participate in future undefined ''proceedings'' and which ''privileges'' in the Judiciary Committee's Impeachment Procedures the President's counsel would seek to exercise.[492] At the same time, he gave no indication as to what these ''proceedings'' would involve, what subjects they would address, whether witnesses would be heard (or who they would be), or when any hearings would be held.[493] To inform the President's decision, the President's counsel asked Chairman Nadler for information about the ''scope and nature of the proceedings'' he planned, including topics of hearings, whether he intended ''to allow for fact witnesses to be called,'' and whether he would allow ''the President's counsel the right to cross examine fact witnesses.'' [494] The President's counsel even offered to meet with Chairman Nadler to discuss a plan for upcoming hearings.[495] All to no avail—Chairman Nadler did not even bother to respond.

And the Judiciary Committee continued to hide the ball. Throughout the week of December 2, the President's counsel were in contact with Committee counsel trying to get answers concerning what hearings were planned, so that the President could determine whether and how to participate. But all that Committee staff were authorized to convey was: (i) a hearing on an unknown topic had been publicly announced for December 9; (ii) before that hearing, the Committee might be issuing two additional reports (one based on the December 4 constitutional law seminar and one dredging up unspecified aspects of Special Counsel Mueller's report); and (iii) they would not have an answer to any other questions about the subjects of the December 9 hearing or whether any other hearings would be scheduled until after the close of business on Thursday, December 5.

On the morning of December 5, Speaker Pelosi instructed the Judiciary Committee to begin drafting articles of impeachment *before* the Committee had received any presentation on the HPSCI report, heard any fact witness, or heard a single word from the President in his defense.[496] Later that day, Committee counsel informed the President's counsel that—other than a report addressing the meaning of ''high Crimes and Misdemeanors'' based on the December 4 constitutional law seminar and other than a hearing on December 9 involving a presentation of the HPSCI majority and minority reports solely by staff—there were no immediate plans to issue any other reports or have any other hearings.

Meanwhile, Chairman Nadler was also playing hide-the-ball with the minority members of his own Committee. The Committee's Ranking Member, Doug Collins, sent at least seven letters to Chairman Nadler trying to find out about the process the Committee would follow and requesting specific rights to ensure a balanced presentation of the law and facts, including requesting witnesses.[497] Chairman Nadler simply ignored them. He offered only an after-the-fact response [498] that denied his request for witnesses in part on the misleading claim that ''the President is not requesting any witnesses,'' when it was Chairman Nadler who had refused to commit to allowing the President to call witnesses in the first place.[499]

As a backdrop to all of this, Chairman Nadler had threatened to invoke the unprecedented provision of the Committee's Impeachment Inquiry Procedures Pursuant to House Resolution 660 that allowed him to deny the President any due process rights if the President continued to assert longstanding privileges and immunities to protect Executive Branch information and to challenge the validity of the investigating committees' subpoenas.[500] This approach also departed from all precedent in the Clinton and Nixon proceedings.[501] Even though both Presidents had asserted numerous privileges, the Judiciary Committee never contemplated that offering the opportunity to present a defense and to have a fair hearing should be conditioned on forcing the President to abandon the longstanding constitutional rights and privileges of the Executive Branch. The Supreme Court has already addressed such Catch–22 choices and has made clear that it is ''intolerable that one constitutional right should have to be surrendered in order to assert another.'' [502] Conditioning access to basic procedural rights on an agreement to waive other fundamental rights is the same as denying procedural rights altogether.

As a result, by the December 6 deadline, the President had been left with no meaningful choice at all. The Committee was already under instructions to draft articles of impeachment before hearing any evidence; Chairman Nadler had kept the President in the dark until the last minute about how and when the Committee would proceed; and Committee counsel had finally confirmed that the Committee's plan was to hear solely a staff presentation of the HPSCI report and not to hold any other hearings. It was abundantly clear that, if the President asked to present or cross examine any witnesses, any future hearings would merely be window-dressing designed to place a veneer of fair process on a stage-managed show trial already hurtling toward a preordained result. The President would not be given any meaningful opportunity to question fact witnesses or otherwise respond to the one-sided factual record transmitted by HPSCI. The Judiciary Committee's assertion that the President ''could have had his counsel make a presentation of evidence or request that other witnesses be called'' [503] is thus entirely disingenuous. Under those circumstances, the President determined that he would not condone House Democrats' violations of due process—and that he would not lend legitimacy to their unprecedented procedures—by participating in their show trial.

Chairman Nadler ultimately refused to allow the Committee to hear from a single fact witness or hear any evidence first-hand. He also blatantly violated House Rules by refusing to allow the minority to have a minority hearing day.[504] Instead, the Judiciary Committee simply relied on the *ex parte* evidence gathered by Chairman Schiff's show trial with no procedural protections at all. And there could be no clearer admission that the evidence simply did not matter than Speaker Pelosi's instruction to begin drafting articles of impeachment *before* the Committee had even heard any evidence whatsoever.[505]

All of this conduct highlights rank hypocrisy by Chairman Nadler, who, during the Clinton impeachment, decried the fact that there had been ''no witness called in front of this committee against the President'' and declared it ''a failure of the Chairman of this committee that we are going to consider voting impeachment, having heard no witnesses whatsoever against the President.'' [506] Then, Chairman Nadler argued that the Judiciary Committee cannot simply receive a report compiled by another entity (there, the Independent Counsel) and proceed to judgment. That, in his words, ''would be to say that the role of this committee of the House is a mere transmission belt or rubber stamp,'' [507] and would ''conclude the inquiry expeditiously, but not fairly, and not without trashing the Constitution and every principle of due process and fundamental fairness that we have held sacred since the Magna Carta.'' [508] House Democrats on the Judiciary Committee made the same point just a few years ago in 2016: ''[i]n all modern cases, the Committee has conducted an independent, formal investigation into the charges underlying a resolution of impeachment—again, *even when* other authorities and other congressional committees have already investigated the underlying issue.'' [509]

The House's constitutionally deficient proceedings have so distorted the factual record compiled in the House that it cannot constitutionally be relied upon for the Senate to reach any verdict other than acquittal.

C. The House's Inquiry Was Irredeemably Defective Because It Was Presided Over by an Interested Fact Witness Who Lied About Contact with the Whistleblower Before the Complaint Was Filed

The House's entire factual investigation was carefully orchestrated—and restricted—by an interested fact witness: Chairman Schiff. His repeated falsehoods about the President leave him with no credibility whatsoever. In March 2017, Chairman Schiff lied, announcing that he already had evidence that the Trump campaign colluded with Russia.[510] That was proved false when the Mueller Report was released and the entire Russian hoax Chairman Schiff had been peddling was disproved.

In this proceeding, Chairman Schiff violated basic fairness by overseeing and prosecuting the proceedings while secretly being a witness in the case. Before public release of the whistleblower complaint, when asked whether he had ''heard from the whistleblower,'' Chairman Schiff falsely denied having ''heard from the whistleblower,'' saying: ''We have not spoken directly with the whistleblower. We would like to . . . But yes, we would love to talk directly with the whistleblower.'' [511] As multiple media outlets concluded, that statement was ''flat-out false'' [512]—a ''[w]hopper'' of a lie that earned ''four Pinnochios'' from *The Washington Post* [513]—because it ''wrongly implied the committee had not been contacted'' by the whistleblower before the complaint was filed.[514] Subsequent reporting showed that Chairman Schiff's staff had not only had

contact with the whistleblower, but apparently played some still-unverified role in advising the whistleblower before the complaint was filed.[515] And Chairman Schiff began the hearings in this matter by lying once again and reading a fabricated version of the President's telephone conversation with President Zelensky to the American people.[516]

Given the role that Chairman Schiff and his staff apparently played in advising the whistleblower, Chairman Schiff made himself a fact witness in these proceedings. The American people understand that Chairman Schiff cannot covertly assist with the submission of a complaint, mislead the public about his involvement, and then pretend to be a neutral ''investigator.'' No wonder Chairman Schiff repeatedly denied requests to subpoena the whistleblower and shut down any questions that he feared might identify the whistleblower. Questioning the whistleblower would have exposed before the American people the role Chairman Schiff and his staff had in concocting the very complaint they purported to be investigating.

D. The Senate May Not Rely on a Factual Record Derived from a Procedurally Deficient House Impeachment Inquiry

The Senate may not rely on a corrupted factual record derived from constitutionally deficient proceedings to support a conviction of the President of the United States. Nor is it the Senate's role to attempt to remedy the House's errors by providing a ''do-over'' to develop the record anew in the Senate. In the courts, comparable fundamental errors underpinning the foundations of a case would require throwing the case out. The denial of ''basic protections'' of due process ''necessarily render[s]'' a proceeding ''fundamentally unfair,'' precluding it from ''reliably serv[ing] its function as a vehicle for determination of guilt or innocence.'' [517] A ''proceeding infected with fundamental procedural error, like a void judicial judgment, is a legal nullity.'' [518] That is why, for example, criminal indictments may not proceed to trial when they result from ''fundamental'' errors that cause ''the structural protections of the grand jury [to] have been so compromised as to render the proceedings fundamentally unfair.'' [519] The same principles should apply in the impeachment trial context. The Senate cannot rely on a record developed in a hopelessly defective House proceeding to convict the President.

E. House Democrats Used an Unprecedented and Unfair Process Because Their Goal to Impeach at Any Cost Had Nothing To Do with Finding the Truth

House Democrats' impeachment inquiry was never a quest for the truth. Instead it was an inquisition in pursuit of an offense to justify a pre-ordained outcome—impeaching President Trump by any means necessary. The procedural protections that the House has afforded to the accused in every impeachment for the last 150 years were incompatible with that agenda. Ensuring a fair process that uses time-tested methods for getting at the truth—like adversarial cross examination of witnesses by counsel for the accused—takes time and it also risks undermining the accusers' preferred version of the facts. But House Democrats had no time. By September 2019, when the President released the transcript of his telephone call with President Zelensky, the 2020 campaign for the presidency was already well underway, and they needed a fast and tightly controlled process that would yield their political goal: impeachment by Christmas.

In fact, House Democrats have been on a crusade to impeach the President since *the moment he took office three years ago*. As Speaker Pelosi recently confirmed, her party's quest for impeachment had ''been going on for 22 months . . . [t]wo and a half years, actually.'' [520] The moment that the President was sworn in, two liberal advocacy groups launched a campaign to impeach him.[521] The current proceedings began with a complaint prepared with the assistance of a lawyer who declared in 2017 that he was already planning to use ''impeachment'' to effect a ''coup.'' [522] The first resolution proposing articles of impeachment against President Trump was filed before he had been in office for six months.[523] As soon as Democrats gained control of the House in the 2018 midterm elections, they made clear that they would stop at nothing to impeach the President. Rep. Rashida Tlaib, for example, announced in January 2019: ''[W]e're going to go in there and we're gonna impeach the motherf****r.'' [524]

Over the past three years, House Democrats have filed at least eight resolutions to impeach the President, alleging a vast range of preposterous purported offenses. They have repeatedly charged the President with obstruction of justice in connection with the Mueller investigation [525]—an allegation that the Department of Justice resoundingly rejected.[526] One resolution sought to impeach the President for protecting national security by restricting U.S. entry by nationals of eight countries [527]—an action upheld by the Supreme Court.[528] Another tried to impeach the President for publishing disparaging tweets about Democrat House members in response to their own attacks on the President.[529] Still another gathered a hodge-podge of absurd charges, including failing to nominate persons to fill vacancies and insulting the press.[530]

In this case, House Democrats ran the fastest presidential impeachment fact-finding on record. They raced through their entire process in less than three months from the beginning of their fact-finding investigation on September 24, 2019 to the adoption of articles on December 18—meeting their deadline of impeachment by Christmas. That rushed three-month process stands apart from *every* prior presidential impeachment—the fastest of which took place after a fact-finding period *nearly four* times as long. Independent Counsel Ken Starr received authorization to investigate the charges that led to President Clinton's impeachment in January 1998,[531] almost a full year before the House impeached President Clinton in December 1998.[532] Congress began investigating President Nixon's conduct in February 1973,[533] more than one year before July 1974, when the House Judiciary Committee voted to recommend articles of impeachment.[534] The investigation into President Johnson also exceeded 12 months. Except for a two-month break between a vote rejecting articles of impeachment in 1867 and the authorization of a second impeachment inquiry,[535] President Johnson's impeachment was investigated over 14 months from January 1867 [536] to the adoption of articles of impeachment in March 1868.[537] The two inquiries were closely related,[538] and one article of impeachment was carried over from the first impeachment inquiry.[539] The Democrats' need for speed only underscores that, unlike prior impeachments, these proceedings were never about conducting a serious inquiry into the truth.

Although they tried everything, Democrats pinned their impeachment dreams primarily on the Mueller investigation and their dogmatic faith in the myth that President Trump—or at least his campaign—was somehow in league with Russia. After $32 million, 2,800 subpoenas, nearly 500 search warrants, 230 orders for communications records, and 500 witness interviews, that inquisition disproved the myth of collusion between the President or his campaign and Russia. As the Mueller Report informed the public, Special Counsel Mueller and his team of investigators and FBI agents could not find any evidence of collusion between the Trump Campaign and the Russian government.[540] While the Mueller investigation was pending, though, Chairman Schiff flatly lied to the American people, telling them that he was privy to '' 'more than circumstantial evidence' that the President's associates colluded with Russia.'' [541] He played up the Mueller investigation, promising that it would show wrongdoing ''of a size and scope probably beyond Watergate.'' [542]

The damage caused by Democrats' Russian collusion delusion stretches far beyond anything directly attributable to the Mueller investigation. The Mueller investigation itself was triggered by an FBI investigation, known as Crossfire Hurricane, that involved gross abuses of FBI investigative tools—including FISA orders and undercover agents. The FBI abused its extraordinary authorities to spy on American citizens and a major-party presidential campaign.[543] According to a report from the Inspector General of the Department of Justice, these abuses included ''multiple instances'' of factual assertions to the FISA court that were knowingly ''inaccurate, incomplete, or unsupported by appropriate documentation'' [544]—in other words, *lies* to the FISA court. One FBI official, who openly advocated for ''resistance'' against the President, even fabricated evidence to persuade the FISA court to maintain surveillance on an American citizen connected with the Trump Campaign.[545] Tellingly, the Inspector General could not rule out the possibility that Crossfire Hurricane was corrupted by political bias, because the FBI could not provide ''satisfactory explanations'' for the extraordinary litany of errors and abuses that plagued the investigation from its inception—all of which indicated bias against the President.[546]

Despite all of this, House Democrats have refused to accept the conclusions of the Mueller Report. They held hearings and issued subpoenas hoping to uncover collusion where Mueller had found none. Failing that, they tried to keep the impeachment flame alive by manufacturing an obstruction charge—even though the Department of Justice had already rejected such a claim.[547] They embarked on new fishing expeditions, such as demanding the President's tax returns, investigating the routine Executive Branch practice of granting case-by-case exceptions to the President's voluntarily undertaken ethics guidelines, and the costs of the July 4 ''Salute to America'' event—all in the hope that rummaging through those records might give them some new basis for attacking the President.

Democrats have been fixated on impeachment and Russia for the past three years for two reasons. First, they have never accepted the results of the 2016 election and have been consumed by an insatiable need to justify their continued belief that President Trump could not ''really'' have won. Long before votes had been cast, Democrats had taken it as an article of faith that Hillary Clinton would be the next President. House Democrats' impeachment and Russia obsessions thus stem from a pair of false beliefs held as dogma: that Donald Trump should not be President and that he is President only by virtue of foreign interference.

The second reason for Democrats' fixations is that they desperately need an illegitimate boost for their candidate in the 2020 election, whoever that may be. Put simply, Democrats have no response to the President's record of achievement in restoring growth and prosperity to the American economy, rebuilding America's military, and confronting America's adversaries abroad. They have no policies and no ideas to compete against that.

Instead, they are held hostage by a radical left wing that has foisted on the party a radical agenda of socialism at home and appeasement abroad that Democrat leaders know the American people will never accept. For Democrats, President Trump's record of success made impeachment an electoral imperative. As Congressman Al Green explained it: ''if we don't impeach the [P]resident, he will get re-elected.'' [548]

The result of House Democrats' relentless pursuit of their obsessions—and their willingness to sacrifice every precedent, every principle, and every procedural right standing in their way—is exactly what the Framers warned against: a wholly partisan impeachment. The Articles of Impeachment now before the Senate were adopted without a single Republican vote. Indeed, the only bipartisan aspect of these articles was congressional opposition to their adoption.[549]

Democrats used to recognize that the momentous act of overturning a national election by impeaching a President should never take place on a partisan basis, and that impeachment should not be used as a partisan tool in electoral politics. As Chairman Nadler explained in 1998:

The effect of impeachment is to overturn the popular will of the voters. We must not overturn an election and remove a President from office except to defend our system of government or our constitutional liberties against a dire threat, and we must not do so without an overwhelming consensus of the American people. There must never be a narrowly voted impeachment or an impeachment supported by one of our major political parties and opposed by another. Such an impeachment will produce divisiveness and bitterness in our politics for years to come, and will call into question the very legitimacy of our political institutions.[550]

Senator Leahy agreed: ''A partisan impeachment cannot command the respect of the American people. *It is no more valid than a stolen election.*'' [551] Chairman Schiff likewise recognized that a partisan impeachment would be ''doomed for failure,'' adding that there was ''little to be gained by putting the country through that kind of wrenching experience.'' [552] Earlier last year even Speaker Pelosi acknowledged that, ''before I think we should go down any impeachment path,'' it ''would have to be so clearly bipartisan in terms of acceptance of it.'' [553]

Now, however, House Democrats have completely abandoned those principles and placed before the Senate Articles of Impeachment that are partisan to their core. In their rush to impeach the President before Christmas, Democrats allowed speed and political expediency to conquer fairness and truth. As Professor Turley explained, this impeachment ''stand[s] out among modern impeachments as the shortest proceeding, with the thinnest evidentiary record, and the narrowest grounds ever used to impeach a president.'' [554] And as the vote closed, House Democrats could not contain their glee. Several Democrats clapped; others cheered; and still others raised exclamations of joy on the floor of the House of Representatives—until the Speaker shamed them into silence.[555]

The Framers foresaw clearly the possibility of such an improper, partisan use of impeachment. As Hamilton recognized, impeachment could be a powerful tool in the hands of determined ''pre-existing factions.'' [556] The Framers fully recognized that ''the persecution of an intemperate or designing majority in the House of Representatives'' was a real danger.[557] That is why they chose the Senate as the tribunal for trying impeachments. Further removed from the politics of the day than the House, they believed the Senate could mitigate the ''danger that the decision'' to remove a President would be based on the ''comparative strength of parties'' rather ''than by the real demonstrations of innocence or guilt.'' [558] The Senate would thus ''guard[] against the danger of persecution, from the prevalency of a factious spirit'' in the House.[559] It now falls to the Senate to fulfill the role of guardian that the Framers envisioned and to reject these wholly insubstantial Articles of Impeachment that have been propelled forward by nothing other than partisan enmity toward the President.

III. Article I Fails Because the Evidence Disproves House Democrats' Claims

Despite House Democrats' unprecedented, rigged process, the record they compiled clearly establishes that the President did nothing wrong.

This entire impeachment charade centers on a telephone call that President Trump had with President Zelensky of Ukraine on July 25, 2019. There is no mystery about what happened on that call, because the President has been completely transparent: he released a transcript of the call months ago. And that transcript shows conclusively that the call was perfectly appropriate. Indeed, the person on the other end of the call, President Zelensky, has confirmed in multiple public statements that the call was perfectly normal. Before they had even seen the transcript, though, House Democrats concocted all their charges based on distortions peddled by a so-called whistleblower *who had no first-hand knowledge of the call*. And contrary to their claims, the transcript proves that the President did not seek to use either security assistance or a presidential meeting as leverage to pressure Ukrainians to announce investigations on two subjects: (i) possible Ukrainian interference in the 2016 election; or (ii) an incident in which then-Vice President Biden had forced the dismissal of a Ukrainian anti-corruption prosecutor who reportedly had been investigating a company (Burisma) that paid Biden's son, Hunter, to sit on its board.[560] The President did not even *mention* the security assistance on the call, and he invited President Zelensky to the White House without any condition whatsoever. When the President released the transcript of the call on September 25, 2019, it cut the legs out from under all of House Democrats' phony claims about a quid pro quo. That should have ended this entire matter.

Nevertheless, House Democrats forged ahead, determined to gin up some other evidence to prop up their false narrative. But even their rigged process failed to yield the evidence they wanted. Instead, the record affirmatively refutes House Democrats' claims. In addition to the transcript, the central fact in this case is this: there are only two people who have made statements on the record who say they spoke directly to the President about the heart of this matter—Ambassador Gordon Sondland and Senator Ron Johnson. And they both confirmed that the President stated unequivocally that he sought nothing and no quid pro quo of any kind from Ukraine. House Democrats' claims are built entirely on speculation from witnesses who had no direct knowledge about anything and who never even spoke to the President about this matter.

House Democrats' charges also rest on the fundamentally mistaken premise that it would have been illegitimate for the President to ask President Zelensky about either: (i) Ukrainian interference in the 2016 election or (ii) the Biden-Burisma affair. That is obviously wrong. Asking another country to examine potential interference in a past U.S. election is always permissible. Similarly, it would not have been improper for the President to ask the Ukrainians about an incident in which Vice President Biden had threatened withholding U.S. loan guarantees to secure the dismissal of a prosecutor when Biden had been operating under, at the very least, the appearance of a serious conflict of interest.

A. The Evidence Refutes Any Claim That the President Conditioned the Release of Security Assistance on an Announcement of Investigations by Ukraine

The evidence squarely refutes the made-up claim that the President leveraged security assistance in exchange for Ukraine announcing an investigation into either interference in the 2016 election or the Biden-Burisma affair.

1. The July 25 Call Transcript Shows the President Did Nothing Wrong

The most important piece of evidence demonstrating the President's innocence is the transcript of the President's July 25 telephone call with President Zelensky. In an unprecedented act of transparency, the President made that transcript public months ago.[561] President Trump did not even mention the security assistance on the call, and he certainly did not make any connection between the assistance and any investigation. Instead, the record shows that he raised two issues that are entirely consistent with both his authority to conduct foreign relations and his longstanding concerns about how the United States spends taxpayers' money on foreign aid: burden-sharing and corruption.

Burden-sharing has been a consistent theme of the President's foreign policy,[562] and he raised burden-sharing directly with President Zelensky, noting that ''Germany does almost nothing for you'' and ''[a] lot of the European countries are the same way.'' [563] President Zelensky acknowledged that European countries should be Ukraine's biggest partner, but they surprisingly were not.[564]

President Trump also raised concerns about corruption. He first raised these concerns in connection with reports of Ukrainian actions in the 2016 presidential election. Numerous media outlets have reported that Ukrainian officials took steps to influence and interfere in the 2016 election to undermine then-candidate Trump, and three Senate committee chairmen are currently investigating this interference.[565] President Trump raised ''this whole situation'' and noted particularly that President Zelensky was ''surrounding [him]self with some of the same people.'' [566] President Zelensky responded by noting that he had recalled the Ukrainian Ambassador to the United States—an individual who had sought to influence the U.S. election by authoring an anti-Trump op-ed.[567] As Democrats' witness Dr. Hill testified, many officials in the State Department and NSC were similarly concerned about individuals surrounding Zelensky.[568]

The President also mentioned an incident involving then-Vice President Joe Biden and a corruption investigation involving Burisma.[569] In that incident, a corruption investigation involving Burisma had reportedly been stopped after Vice President Biden threated to withhold one billion dollars in U.S. loan guarantees unless the Ukrainian government fired a prosecutor.[570] At the time, Vice President Biden's son, Hunter, was sitting on the Burisma's board of directors.[571] The fired prosecutor reportedly had been investigating Burisma at the time.[572] In fact, on July 22, 2019—just days before the July 25 call—*The Washington Post* reported that the prosecutor ''said he believes his ouster was because of his interest in [Burisma]'' and ''[h]ad he remained in his post. . .he would have questioned Hunter

Biden.'' [573] The incident raised important issues for anti-corruption efforts in Ukraine, as it raised at least the possibility that a U.S. official may have been involved in derailing a legitimate investigation of a foreign sovereign.

As these examples show, President Trump raised corruption issues with President Zelensky. House Democrats' claim that he did not address corruption because the incidents he raised were ''not part of any official briefing materials or talking points'' is nonsense.[574] President Trump spoke extemporaneously and used specific examples rather than following boilerplate talking points proposed by the NSC.[575] That is the President's prerogative. He is not bound to raise his concerns with a foreign leader in the terms a staffer placed on a briefing card.

More important, President Zelensky has publicly confirmed that he understood President Trump to be talking precisely about corruption. On the call, President Zelensky acknowledged that the incidents President Trump had raised highlighted ''the issue of making sure to restore the honesty.'' [576] As President Zelensky later explained, he understood President Trump to be saying ''we are tired of any corruption things.'' [577] President Zelensky explained that his response was essentially, ''[w]e are not corrupt.'' [578]

In contrast to the explicit discussions about burden-sharing and corruption, there was no discussion of the paused security assistance on the July 25 call. To fill that gap, House Democrats seize on President Zelensky's statement that Ukraine was ''almost ready to buy more Javelins,'' and President Trump's subsequent turn of the conversation as he said, ''I would like you to do us a favor though because our country has been through a lot and Ukraine knows a lot about it.'' [579] According to House Democrats, that sequence alone somehow linked the security assistance to a ''favor'' for President Trump relating to ''his reelection efforts.'' [580] That is nonsense.

First, President Trump asked President Zelensky to ''do *us* a favor,'' and he made clear that ''us'' referred to ''*our country*'' as he put it, ''because *our country* has been through a lot.'' [581] *Second*, nothing in the flow of the conversation suggests that the President was drawing a connection between the Javelin sales and the next topics he turned to.[582] The President was clearly transitioning to a new subject. *Third*, as Democrats' own witnesses conceded, Javelins are *not* part of the security assistance that had been temporarily paused.[583] Accordingly, House Democrats' assertion that ''President Trump froze'' Javelin sales ''without explanation'' is demonstrably false.[584] *Fourth*, the President frequently uses variations of the phrase ''do us a favor'' in the context of international diplomacy, and the ''favors'' have nothing to do with the President's personal interests.[585] The President cannot be removed from office because House Democrats deliberately misconstrue one of his commonly used phrases.

Notably, multiple government officials were on the July 25 call, and only one of them—NSC Director for European Affairs Alexander Vindman—raised any concerns at the time about the substance of it.[586] His concerns were based primarily on policy disagreements and a misplaced belief that the President of the United States should have deferred to him on matters of foreign relations. Lt. Col. Vindman testified that he had ''deep policy concerns'' [587] about Ukraine retaining bipartisan support,[588] but he ultimately conceded that the President not a staffer like him sets policy.[589]

Mr. Morrison, Lt. Col. Vindman's supervisor, affirmed that ''there was nothing improper that occurred during the call.'' [590] Similarly, National Security Advisor to the Vice President Keith Kellogg said that he ''heard nothing wrong or improper on the call.'' [591]

2. President Zelensky and Other Senior Ukrainian Officials Confirmed There Was No Quid Pro Quo and No Pressure on Them Concerning Investigations

The *Ukrainian government* also made clear that President Trump did not connect security assistance and investigations on the call. The Ukrainians' official statement did not reflect any such link,[592] and President Zelensky has been crystal clear about this in his public statements. He has explained that he ''never talked to the President from the position of a quid pro quo'' [593] and stated that they did not discuss the security assistance on the call at all.[594] Indeed, President Zelensky has confirmed several separate times that his communications with President Trump were ''good'' and ''normal,'' and ''no one pushed me.'' [595] The day after the call, President Zelensky met with Ambassador Volker, Ambassador Sondland, and Ambassador Taylor in Kyiv. Ambassador Volker reported that the Ukrainians ''thought [the call] went well.'' [596] Likewise, Ambassador Taylor reported that President Zelensky stated that he was ''happy with the call.'' [597] And Ms. Croft, who met with President Zelensky's chief of staff Andriy Bohdan the day after the call, heard from Bohdan that the call ''was a very good call, very positive, they had good chemistry.'' [598]

Other high ranking Ukrainian officials confirmed that they never perceived a connection between security assistance and investigations. Ukrainian Foreign Minister Vadym Prystaiko stated his belief that ''there was no pressure,'' [599] he has ''never seen a direct link between investigations and security assistance,'' and ''there was no clear connection between these events.'' [600] Similarly, when President Zelensky's adviser, Andriy Yermak, was asked if ''he had ever felt there was a connection between the U.S. military aid and the requests for investigations,'' he was ''adamant'' that ''[w]e never had that feeling'' and ''[w]e did not have the feeling that this aid was connected to any one specific issue.'' [601]

3. President Zelensky and Other Senior Ukrainian Officials Did Not Even Know That the Security Assistance Had Been Paused

House Democrats' theory is further disproved because the evidence shows that President Zelensky and other senior Ukrainian officials did not even *know* that the aid had been paused until more than a month after the July 25, 2019 call, when the pause was reported in Politico at the end of August.[602] The Ukrainians could not have been pressured by a pause on the aid they did not even know about.

The uniform and uncontradicted testimony from American officials who actually interacted with President Zelensky and other senior Ukrainian officials was that they had no reason to think that Ukraine knew of the pause until more than a month after the July 25 call. Ambassador Volker testified that he ''believe[s] the Ukrainians became aware of the delay on August 29 and not before.'' [603] Ambassador Taylor agreed that, to the best of his knowledge, ''nobody in the Ukrainian Government became aware of a hold on military aid until . . . August 29th.'' [604] Mr. Morrison concurred, testifying that he had ''no reason to believe the Ukrainians had any knowledge of the review until August 28, 2019.'' [605] Deputy Assistant Secretary Kent and Ambassador Sondland agreed.[606]

Public statements from high-level Ukrainian officials have confirmed the same point. For example, adviser to President Zelensky Andriy Yermak told *Bloomberg* that President Zelensky and his key advisers learned of the pause only from the *Politico* article.[607] And then-Foreign Minister Pavlo Klimkin learned of the pause in the aid ''by reading a news article,'' and Deputy Minister of Defense Oleh Shevchuk learned ''through media reports.'' [608]

Further confirmation that the Ukrainians did not know about the pause comes from the fact that the Ukrainians did not raise the security assistance in any of the numerous high-level meetings held over the summer—something Yermak told *Bloomberg* they would have done had they known.[609] President Zelensky did not raise the issue in meetings with Ambassador Taylor on either July 26 or August 27.[610] And Volker—who was in touch with the highest levels of the Ukrainian government—explained that Ukrainian officials ''would confide things'' in him and ''would have asked'' if they had any questions about the aid.[611] Things changed, however, within hours of the publication of the *Politico* article, when Yermak, a top adviser to President Zelensky, texted Ambassador Volker to ask about the report.[612]

The House Democrats' entire theory falls apart because President Zelensky and other officials at the highest levels of the Ukrainian government did not even know about the temporary pause until shortly before the President released the security assistance. As Ambassador Volker said: ''I don't believe . . . they were aware at the time, so *there was no leverage implied*.'' [613] These facts alone vindicate the President.

4. House Democrats Rely Solely on Speculation Built on Hearsay

House Democrats' charge is further disproved by the straightforward fact that not a single witness with actual knowledge ever testified that the President suggested any connection between announcing investigations and security assistance. Assumptions, presumptions, and speculation based on hearsay are all that House Democrats can rely on to spin their tale of a quid pro quo.

House Democrats' claims are refuted first and foremost by the fact that there are only two people with statements on record who spoke directly with the President about the matter—and both have confirmed that the President expressly told them there was no connection whatsoever between the security assistance and investigations. Ambassador Sondland testified that he asked President Trump directly about these issues, and the President explicitly told him that he did not want anything from Ukraine:

I want nothing. I want nothing. I want no quid pro quo. Tell Zelensky to do the right thing . . . .[614]

Similarly, Senator Ron Johnson has said that he asked the President ''whether there was some kind of arrangement where Ukraine would take some action and the hold would be lifted,'' and the answer was clear and ''[w]ithout hesitation'': ''(Expletive deleted)—No way. I would never do that.'' [615]

Although he did not speak to the President directly, Ambassador Volker also explained that President Trump never linked security assistance to investigations, and the Ukrainians never indicated that they thought there was any connection:

[Q.] Did the President of the United States ever say to you that he was not going to allow aid from the United States to go to [] Ukraine unless there were investigations into Burisma, the Bidens, or the 2016 elections?

[A.] No, he did not.

[Q.] Did the Ukrainians ever tell you that they understood that they would not get a

meeting with the President of the United States, a phone call with the President of the United States, military aid or foreign aid from the United States unless they undertook investigations of Burisma, the Bidens, or the 2016 elections?

[A.] No, they did not.[616]

Against all of that unequivocal testimony, House Democrats base their case entirely on witnesses who offer nothing but speculation. Worse, it is speculation that traces back to one source: Sondland. Other witnesses repeatedly invoked things that Ambassador Sondland had said in a chain of hearsay that would never be admitted in any court. For example, Chairman Schiff's leading witness, Ambassador Taylor, acknowledged that, to the extent he thought there was a connection between the security assistance and investigations, his information came entirely from things that Sondland said—or (worse) second-hand accounts of what Morrison told Taylor that Sondland had said.[617] Similarly, Morrison testified that he ''had no reason to believe that the release of the security-sector assistance might be conditioned on a public statement reopening the Burisma investigation until [his] September 1, 2019, conversation with Ambassador Sondland.''[618]

Sondland, however, testified unequivocally that ''the President did not tie aid to investigations.'' Instead, he acknowledged that any link that he had suggested was based entirely on his own *speculation*, unconnected to any conversation with the President:

[Q.] What about the aid? [Ambassador Volker] says that they weren't tied, that the aid was not tied —

[A.] And I didn't say they were conclusively tied either. *I said I was presuming it*.

[Q.] Okay. And so the President never told you they were tied.

[A.] That is correct.

[Q.] So your testimony and [Ambassador Volker's] testimony is consistent, and the President did not tie aid to investigations.

[A.] That is correct.[619]

Indeed, Sondland testified that he did ''not recall any discussions with the White House on withholding U.S. security assistance from Ukraine in return for assistance with the President's 2020 reelection campaign.''[620] And he explained that he ''did not know (and still do[es] not know) when, why, or by whom the aid was suspended,'' so he just ''*presumed* that the aid suspension had become linked to the proposed anti-corruption statement.''[621] In his public testimony alone, Sondland used variations of ''presume,'' ''assume,'' ''guess,'' or ''speculate'' over *thirty* times. When asked if he had any ''testimony [] that ties President Trump to a scheme to withhold aid from Ukraine in exchange for these investigations,'' he stated that he has nothing ''[o]ther than [his] own presumption,'' and he conceded that ''[n]o one on this planet told [him] that Donald Trump was tying aid to investigations.''[622] House Democrats' assertion that ''President Trump made it clear to Ambassador Sondland—who conveyed this message to Ambassador Taylor—that everything was dependent on such an announcement [of investigations],'' simply misrepresents the testimony.[623]

5. The Security Assistance Flowed Without Any Statement or Investigation by Ukraine

The made-up narrative that the security assistance was conditioned on Ukraine taking some action on investigations is further disproved by the straightforward fact that the aid was released on September 11, 2019, without the Ukrainians taking any action on investigations. President Zelensky never made a statement about investigations, nor did anyone else in the Ukrainian government. Instead, the evidence confirms that the decision to release the aid was based on entirely unrelated factors. *See infra* Part III.B. The paused aid, moreover, was entirely distinct from U.S. sales of Javelin missiles and thus had no effect on the supply of those arms to Ukraine.[624]

6. President Trump's Record of Support for Ukraine Is Beyond Reproach

Part of House Democrats' baseless charge is that the temporary pause on security assistance somehow ''compromised the national security of the United States'' by leaving Ukraine vulnerable to Russian aggression.[625] The record affirmatively disproves that claim. In fact, Chairman Schiff's hearings established beyond a doubt that the Trump Administration has been a stronger, more reliable friend to Ukraine than the prior administration. Ambassador Yovanovitch testified that ''our policy actually got stronger'' under President Trump, largely because, unlike the Obama administration, ''this administration made the decision to provide lethal weapons to Ukraine'' to help Ukraine fend off Russian aggression.[626] Yovanovitch explained that ''we all felt [that] was very significant.''[627] Ambassador Taylor similarly explained that the aid package provided by the Trump Administration was a ''substantial improvement'' over the policy of the prior administration, because ''this administration provided Javelin antitank weapons,'' which ''are serious weapons'' that ''will kill Russian tanks.''[628] Deputy Assistant Secretary Kent agreed that Javelins ''are incredibly effective weapons at stopping armored advance, and the Russians are scared of them,''[629] and Ambassador Volker explained that ''President Trump approved each of the decisions made along the way,'' and as a result, ''America's policy towards Ukraine strengthened.''[630] As Senator Johnson has noted, President Trump capitalized on a longstanding congressional authorization that President Obama did not: ''In 2015, Congress overwhelmingly authorized $300 million of security assistance to Ukraine, of which $50 million was to be available only for lethal defensive weaponry. The Obama administration never supplied the authorized lethal defensive weaponry, but President Trump did.''[631]

Thus, any claim that President Trump put the security of Ukraine at risk is flatly incorrect. The pause on security assistance (which was entirely distinct from the Javelin sales) was lifted by the end of the fiscal year, and the aid flowed to Ukraine without any preconditions. Ambassador Volker testified that the brief pause on releasing the aid was ''not significant.''[632] And Under Secretary of State for Political Affairs David Hale explained that ''this [was] future assistance. . . . not to keep the army going now,'' disproving the false claim made by House Democrats that the pause caused any harm to Ukraine over the summer.[633] In fact, according to Oleh Shevchuk, the Ukrainian Deputy Minister of Defense who oversaw U.S. aid shipments, ''the hold came and went so quickly'' that he did not notice any change.[634]

B. The Administration Paused Security Assistance Based on Policy Concerns and Released It After the Concerns Were Satisfied

What the evidence actually shows is that President Trump had legitimate policy concerns about foreign aid. As Under Secretary Hale explained, foreign aid to all countries was undergoing a systematic review in 2019. As he put it, ''the administration did not want to take a, sort of, business-as-usual approach to foreign assistance, a feeling that once a country has received a certain assistance package . . . it's something that continues forever.''[635] Dr. Hill confirmed this review and explained that ''there had been a directive for whole-scale review of our foreign policy, foreign policy assistance, and the ties between our foreign policy objectives and the assistance. This had been going on actually for many months.''[636]

With regard to Ukraine, witnesses testified that President Trump was concerned about corruption and whether other countries were contributing their share.

1. Witnesses Testified That President Trump Had Concerns About Corruption in Ukraine

Contrary to the bald assertion in the House Democrats' trial brief that ''[b]efore news of former Vice President Biden's candidacy broke, President Trump showed no interest in corruption in Ukraine,''[637] multiple witnesses testified that the President has long had concerns about this issue. Dr. Hill, for instance, testified that she ''think[s] the President has actually quite publicly said that he was very skeptical about corruption in Ukraine. And, in fact, he's not alone, because everyone has expressed great concerns about corruption in Ukraine.''[638] Similarly, Ambassador Yovanovitch testified that ''we all'' had concerns about corruption in Ukraine and noted that President Trump delivered an anti-corruption message to former Ukraine President Petro Poroshenko in their first meeting in the White House on June 20, 2017.[639] NSC Senior Director Morrison confirmed that he ''was aware that the President thought Ukraine had a corruption problem, as did many others familiar with Ukraine.''[640] And Ms. Croft also heard the President raise the issue of corruption directly with then-President Poroshenko of Ukraine during a bilateral meeting at the United Nations General Assembly in September 2017.[641] She also understood the President's concern ''[t]hat Ukraine is corrupt'' because she had been ''tasked[] and retasked'' by then-National Security Advisor General McMaster ''to write [a] paper to help [McMaster] make the case to the President'' in connection with prior security assistance.[642]

Concerns about corruption in Ukraine were also entirely justified. As Dr. Hill affirmed, ''eliminating corruption in Ukraine was one of, if [not] the central, goals of U.S. foreign policy'' in Ukraine.[643] Virtually every witness agreed that confronting corruption should be at the forefront of U.S. policy with respect to Ukraine.[644]

2. The President Had Legitimate Concerns About Foreign Aid Burden-Sharing, Including With Regard to Ukraine

President Trump also has well-documented concerns regarding American taxpayers being forced to cover the cost of foreign aid while other countries refuse to pitch in. In fact, ''another factor in the foreign affairs review'' discussed by Under Secretary Hale was ''appropriate burden sharing.''[645] The President's 2018 Budget discussed this precise issue:

The Budget proposes to reduce or end direct funding for international programs and organizations whose missions do not substantially advance U.S. foreign policy interests. The Budget also renews attention on the appropriate U.S. share of international spending at the United Nations, at the World Bank, and for many other global issues where the United States currently pays more than its fair share.[646]

Burden-sharing was reemphasized in the President's 2020 budget when it advocated for reforms that would ''prioritize the efficient use of taxpayer dollars and increased burden-sharing to rebalance U.S. contributions to international organizations.''[647]

House Democrats wrongly claim that ''[i]t was not until September . . . that the hold, for the first time, was attributed to the President's concern about other countries not contributing more to Ukraine''[648] and

that President Trump ''never ordered a review of burden-sharing.''[649] These assertions are demonstrably false.

Mr. Morrison testified that he was well aware of the President's ''skeptical view''[650] on foreign aid generally and Ukrainian aid specifically. He affirmed that the President was ''trying to scrutinize [aid] to make sure the U.S. taxpayers were getting their money's worth'' and explained that the President ''was concerned that the United States seemed to—to bear the exclusive brunt of security assistance to Ukraine. He wanted to see the Europeans step up and contribute more security assistance.''[651]

There is other evidence as well. In a June 24 email with the subject line ''POTUS follow up,'' a Department of Defense official relayed several questions from a meeting with the President, including ''What do other NATO members spend to support Ukraine?''[652] Moreover, as discussed above, President Trump personally raised the issue of burden-sharing with President Zelensky on July 25.[653] Senator Johnson similarly related that the President had shared concerns about burden-sharing with him. He recounted an August 31 conversation in which President Trump described discussions he would have with Angela Merkel, Chancellor of Germany. According to Senator Johnson, President Trump explained: ''Ron, I talk to Angela and ask her, 'Why don't you fund these things,' and she tells me, 'Because we know you will.' We're schmucks, Ron. We're schmucks.''[654] And Ambassador Taylor testified that, when the Vice President met with President Zelensky on September 1, the Vice President reiterated that ''President Trump wanted the Europeans to do more to support Ukraine.''[655]

President Trump's burden-sharing concerns were entirely legitimate. The evidence shows that the United States pays more than its fair share for Ukrainian assistance. As Deputy Assistant Secretary Cooper testified, ''U.S. contributions [to Ukraine] are far more significant than any individual country'' and ''EU funds tend to be on the economic side,'' rather than for ''defense and security.''[656] Even President Zelensky noted in the July 25 call that the Europeans were not helping Ukraine as much as they should and certainly not as much as the United States.[657]

3. Pauses on Foreign Aid Are Often Necessary and Appropriate.

Placing a temporary pause on aid is not unusual. Indeed, the President has often paused, re-evaluated, and even canceled foreign aid programs. For example:

In September 2019, the Administration announced that it was withholding over $100 million in aid to Afghanistan over concerns about government corruption.[658]

In August 2019, President Trump announced that the Administration and Seoul were in talks to ''substantially'' increase South Korea's share of the expense of U.S. military support for South Korea.[659]

In June, President Trump cut or paused over $550 million in foreign aid to El Salvador, Honduras, and Guatemala because those countries were not fairly sharing the burdens of preventing mass migration to the United States.[660]

In or around June, the Administration temporarily paused $105 million in military aid to Lebanon. The Administration lifted the hold in December, with one official explaining that the Administration ''continually reviews and thoroughly evaluates the effectiveness of all United States foreign assistance to ensure that funds go toward activities that further U.S. foreign policy and national security interests.''[661]

In September 2018, the Administration cancelled $300 million in military aid to Pakistan because it was not meeting its counterterrorism obligations.[662]

Indeed, Under Secretary Hale agreed that ''aid has been withheld from several countries across the globe for various reasons, and, in some cases, for reasons that are still unknown just in the past year.''[663] Dr. Hill similarly explained that ''there was a freeze put on all kinds of aid and assistance because it was in the process at the time of an awful lot of reviews of foreign assistance.''[664] She added that, in her experience, ''stops and starts [are] sometimes common . . . with foreign assistance'' and that ''OMB [Office of Management and Budget] holds up dollars all the time,'' including in the past for dollars going to Ukraine.[665] Similarly, Ambassador Volker affirmed that aid gets ''held up from time-to-time for a whole assortment of reasons,'' and explained that ''[i]t's something that had happened in [his] career in the past.''[666]

4. The aid was released after the President's concerns were addressed.

To address President Trump's concerns about corruption and burden-sharing, a temporary pause was placed on the aid to Ukraine. Mr. Morrison testified that ''OMB represented that . . . the President was concerned about corruption in Ukraine, and he wanted to make sure that Ukraine was doing enough to manage that corruption.''[667] And OMB Deputy Associate Director for National Security Mark Sandy testified that he understood the pause to have been a result of the President's ''concerns about the contribution from other countries to Ukraine.''[668]

Over the course of the summer and early September, two series of developments helped address the President's concerns:

First, President Zelensky secured a majority in the Ukrainian parliament and was able to begin reforms under his anti-corruption agenda. As Mr. Morrison explained, when Zelensky was first elected, there was real ''concern about whether [he] would be a genuine reformer'' and ''whether he would genuinely try to root out corruption.''[669] It was also unclear whether President Zelensky's party would ''be able to get a workable majority in the Ukrainian Parliament'' to implement the corruption reforms he promised.[670] It was only later in the summer that President's Zelensky's party won a majority in the Rada—the Ukrainian parliament. As Mr. Morrison testified, on ''the opening day of the [new] Rada,'' the Ukrainians worked through ''an all-night session'' to move forward with concrete reforms.[671] Indeed, Mr. Morrison and Ambassador Bolton were in Kyiv on August 27, and Mr. Morrison ''observed that everybody on the Ukrainian side of the table was exhausted, because they had been up for days working on . . . reform legislation.''[672] President Zelensky ''named a new prosecutor general''—a reform that the NSC was ''specifically interested in.''[673] He also ''had his party introduce a spate of legislative reforms, one of which was particularly significant,'' namely, ''stripping Rada members of their parliamentary immunity.''[674] Additionally, the High Anti-Corruption Court of Ukraine commenced its work on September 5, 2019.[675]

As a result of these developments, Mr. Morrison affirmed that by Labor Day there had been ''definitive developments'' to ''demonstrate that President Zelensky was committed to the issues he campaigned on.[676]

Second, the President heard from multiple parties about Ukraine, including trusted advisers. Senator Johnson has said that he spoke to the President on August 31 urging release of the security assistance. Senator Johnson has stated that the President told him then that, as to releasing the aid, ''[w]e're reviewing it now, and you'll probably like my final decision.''[677] On September 3, 2019, Senators Johnson and Portman, along with other members of the Senate's bipartisan Ukraine Caucus, wrote to the President concerning the status of the aid,[678] and on September 5 the Chairman and Ranking Member of the House Foreign Affairs Committee followed suit with another letter.[679]

Most significantly, Mr. Morrison testified that the Vice President advised the President that the relationship with Zelensky ''is one that he could trust.''[680] The Vice President had met with President Zelensky in Warsaw on September 1 and had heard firsthand that the new Ukrainian administration was taking concrete steps to address corruption and burden-sharing. On corruption reform, President Zelensky ''stated his strong commitment'' and shared ''some of the things he had been doing,'' specifically what his party had done in the ''2 or 3 days'' since the new parliament had been seated.[681] Morrison testified that, on burden-sharing, ''President Zelensky agreed with Vice President Pence that the Europeans should be doing more'' and ''related to Vice President Pence conversations he'd been having with European leaders about getting them to do more.''[682]

Moreover, on September 11, 2019, the President heard directly from Senator Portman.[683] Mr. Morrison testified that Senator Portman made ''the case . . . to the President that it was the appropriate and prudent thing to do'' to lift the pause on the aid.[684] He testified that the Vice President (who had just returned from Europe on September 6) and Senator Portman thus ''convinced the President that the aid should be disbursed immediately''[685]—and the temporary pause was lifted after the meeting.[686]

C. The Evidence Refutes House Democrats' Claim that President Trump Conditioned a Meeting with President Zelensky on Investigations

Lacking any evidence to show a connection between releasing the security assistance and investigations, House Democrats fall back on the alternative theory that President Trump used a bilateral meeting as leverage to pressure Ukraine to announce investigations. But no witness with any direct knowledge supported that claim either. It is undisputed that a bilateral presidential-level meeting was scheduled for September 1 in Warsaw and then took place in New York City on September 25, 2019,[687] without Ukraine saying or doing anything related to investigations.

1. A Presidential Meeting Occurred Without Precondition

Contrary to House Democrats' claims, the evidence shows that a bilateral meeting between President Trump and President Zelensky was scheduled without any connection to any statement about investigations.

Mr. Morrison—whose ''responsibilities'' included ''help[ing] arrange head of state visits to the White House or other head of state meetings''[688]—testified that he was trying to schedule a meeting without any restrictions related to investigations. He testified that he understood that arranging ''the White House visit'' was a ''do-out'' that ''came from the President'' on the July 25 call,[689] and he moved forward with a scheduling proposal.[690] He worked with Ambassador Taylor and the NSC's Senior Director responsible for visits to ''determine dates that would be mutually agreeable to President Trump and President Zelensky.''[691] But due to competing scheduling requests, ''it became clear that the earliest opportunity for the two Presidents to meet would be in Warsaw'' at the beginning of September.[692] In other words, Mr. Morrison made it clear that he

was trying to schedule the meeting in the ordinary course. He did not say that anyone told him to delay scheduling the meeting until President Zelensky had made some announcement about investigations. Instead, he explained that, after the July 25 call, he understood that it was the President's direction to schedule a visit, and he proceeded to execute that direction.

Ultimately, the notion that a bilateral meeting between President Trump and President Zelensky was conditioned on a statement about investigations is refuted by one straightforward fact: a meeting was planned for September 1, 2019 in Warsaw without the Ukrainians saying a word about investigations. As Ambassador Volker testified, Administration officials were ''working on a bilateral meeting to take place in Warsaw on the margins of the commemoration on the beginning of World War II.'' [693] Indeed, by mid-August, U.S. officials expected the meeting to occur,[694] and the Ukrainian government was making preparations.[695] As it turned out, President Trump had to stay in the U.S. because Hurricane Dorian rapidly intensified to a Category 5 hurricane, so he sent the Vice President to Warsaw in his place.[696]

Even that natural disaster did not put off the meeting between the Presidents for long. They met at the next earliest possible date—September 25, 2019, on the sidelines of the United Nations General Assembly. President Zelensky confirmed that there were no preconditions for this meeting.[697] Nor was there anything unusual about the meeting occurring in New York rather than Washington. As Ambassador Volker verified, ''these meetings between countries sometimes take a long time to get scheduled'' and ''[i]t sometimes just doesn't happen.'' [698]

House Democrats cannot salvage their claim by arguing that the high-profile meeting in New York City did not count and that only an Oval Office meeting would do. Dr. Hill explained that what mattered was a bilateral presidential meeting, not the location of the meeting:

[I]t wasn't always a White House meeting per se, but definitely a Presidential-level, you know, meeting with Zelensky and the President. I mean, it could've taken place in Poland, in Warsaw. It could've been, you know, a proper bilateral in some other context. But in other words, a White House-level Presidential meeting.[699]

The Ukrainians had such a meeting scheduled for September 1 in Warsaw (until Hurricane Dorian disrupted plans), and the meeting took place on September 25 in New York—all without anyone making any statement about investigations.

2. No Witness With Direct Knowledge Testified that President Trump Conditioned a Presidential Meeting on Investigations

House Democrats' tale of a supposed quid pro quo involving a presidential meeting is further undermined by the fact that it rests entirely on mere speculation, hearsay, and innuendo. Not a single witness provided any first-hand evidence that the President ever linked a presidential meeting to announcing investigations.

Once again, House Democrats' critical witness—Sondland—actually destroys their case. He is the only witness who spoke directly to President Trump on the subject. And Sondland testified that, when he broadly asked the President what he wanted from Ukraine, the President answered unequivocally: ''I want nothing. I want no quid pro quo. I just want Zelensky to do the right thing, to do what he ran on.'' [700]

Sondland clearly stated that ''the President never discussed'' a link between investigations and a White House meeting,[701] and Sondland's mere *presumptions* about such a link are not evidence. As he put it, the most he could do is ''repeat . . . what [he] heard through Ambassador Volker from Giuliani,'' [702] who, he ''*presumed*,'' spoke to the President on this issue.[703] But Ambassador Volker testified unequivocally that there was *no connection* between the meeting and investigations:

Q. Did President Trump ever withhold a meeting with President Zelensky or delay a meeting with President Zelensky until the Ukrainians committed to investigate the allegations that you just described concerning the 2016 Presidential election?

A. The answer to the question is no, if you want a yes-or-no answer. But the reason the answer is no is we did have difficulty scheduling a meeting, but there was no linkage like that.

Q. You said that you were not aware of any linkage between the delay in the Oval Office meeting between President Trump and President Zelensky and the Ukrainian commitment to investigate the two allegations as you described them, correct?

A. Correct.[704]

Sondland confirmed the same point. When asked if ''the President ever [told him] personally about any preconditions for anything,'' Sondland responded, ''No.'' [705] And when asked if the President ever ''told [him] about any preconditions for a White House meeting,'' he again responded, ''[p]ersonally, no.'' [706] No credible testimony has been advanced supporting House Democrats' claim of a quid pro quo.

D. House Democrats' Charges Rest on the False Premise That There Could Have Been No Legitimate Purpose To Ask President Zelensky About Ukrainian Involvement in the 2016 Election and the Biden-Burisma Affair

The charges in Article I are further flawed because they rest on the transparently erroneous proposition that it would have been illegitimate for the President to mention two matters to President Zelensky: (i) possible Ukrainian interference in the 2016 election; and (ii) an incident in which then-Vice President Biden forced the dismissal of a Ukrainian anti-corruption prosecutor who reportedly had been investigating Burisma. House Democrats' characterizations of the President's conversation are false. Moreover, as House Democrats frame their charges, to prove the element of ''corrupt motive'' at the heart of Article I, they must establish (in their own words) that the *only* reason for raising those matters would have been ''to obtain an improper personal political benefit.'' [707] And as they cast their case, any investigation into those matters would have been ''bogus'' or a ''sham'' because, according to House Democrats, neither investigation would have been ''premised on any legitimate national security or foreign policy interest.'' [708] That is obviously incorrect.

It would have been entirely proper for the President to ask President Zelensky to find out about any role that Ukraine played in the 2016 presidential election. Uncovering potential foreign interference in U.S. elections is always a legitimate goal. Similarly, it also would have been proper to ask about an incident in which Vice President Biden actually leveraged the threat of withholding one billion dollars in U.S. loan guarantees to secure the dismissal of a Ukrainian prosecutor who was reportedly investigating Burisma—at a time when his son, Hunter, was earning vast sums for sitting on Burisma's board.[709] House Democrats' own witnesses established ample justification for asking questions about the Biden-Burisma affair, as they acknowledged that Vice President Biden's conduct raises, at the very least, the appearance of a conflict of interest.[710]

1. It Was Entirely Appropriate for President Trump To Ask About Possible Ukrainian Interference in the 2016 Election

House Democrats' theory that it would have been improper for President Trump to ask President Zelensky about any role that Ukraine played in interfering with the 2016 election makes no sense. Uncovering any form of foreign interference in a U.S. presidential election is squarely a matter of national interest. In this case, moreover, there is abundant information already in the public domain suggesting that Ukrainian officials systematically sought to interfere in the 2016 election to support one candidate: Hillary Clinton.

To give just a few examples, a former Democratic National Committee (DNC) consultant, Alexandra Chalupa, admitted to a reporter that Ukraine's embassy in the United States was ''helpful'' in her efforts to collect dirt on President Trump's then-campaign manager, Paul Manafort.[711] As *Politico* reported, ''Chalupa said the [Ukrainian] embassy also worked directly with reporters researching Trump, Manafort and Russia to point them in the right directions.'' [712] A former political officer in that embassy also claimed the Ukrainian government coordinated directly with the DNC to assist the Clinton campaign in advance of the 2016 presidential election.[713] And Nellie Ohr, a former researcher for the firm that hired a foreign spy to produce the Steele Dossier, testified to Congress that Serhiy Leshchenko, then a member of Ukraine's Parliament, also provided her firm with information as part of the firm's opposition research on behalf of the DNC and the Clinton Campaign.[714] Even high-ranking Ukrainian government officials played a role. For example, Arsen Avakov, Ukraine's Minister of Internal Affairs, called then-candidate Trump ''an even bigger danger to the US than terrorism.'' [715]

At least two news organizations conducted their own investigations and concluded Ukraine's government sought to interfere in the 2016 election. In January 2017, *Politico* concluded that ''Ukrainian government officials tried to help Hillary Clinton and undermine Trump by publicly questioning his fitness for office.'' [716] And on the other side of the Atlantic, a separate investigation by *The Financial Times* confirmed Ukrainian election interference. The newspaper found that opposition to President Trump led ''Kiev's wider political leadership to do something they would never have attempted before: intervene, however indirectly, in a US election.'' [717] These efforts were designed to undermine Trump's candidacy because, as one member of the Ukrainian parliament put it, the majority of Ukrainian politicians were ''on Hillary Clinton's side.'' [718]

Even one of House Democrats' own witnesses, Dr. Hill, acknowledged that some Ukrainian officials ''bet on Hillary Clinton winning the election,'' and so it was ''quite evident'' that ''they were trying to curry favor with the Clinton campaign,'' including by ''trying to collect information . . . on Mr. Manafort and on other people as well.'' [719]

If even a fraction of all this is true, Ukrainian interference in the 2016 election is squarely a matter of national interest. It is well settled that the United States has a ''compelling interest . . . in limiting the participation of foreign citizens in activities of American democratic self-government, and in thereby preventing foreign influence over the U.S. political process.'' [720] Congress has forbidden foreigners' involvement in American elections.[721] And President Trump made clear more than a year ago that ''the United States will not tolerate any form of foreign meddling in our elections'' during his Administration.[722] Even Chairman Schiff is on

record agreeing that the Ukrainian efforts to aid the Clinton campaign described above would be ''problematic,'' if true.[723]

A request for Ukraine's assistance in this case also would have been particularly appropriate because the Department of Justice had already opened a probe on a similar subject matter to examine the origins of foreign interference in the 2016 election that led to the false Russian-collusion allegations against the Trump Campaign. In May of last year, Attorney General Barr publicly announced that he had appointed U.S. Attorney John Durham to lead a review of the origins and conduct of the Department of Justice's Russia investigation and targeting of members of the Trump campaign, including any potential wrongdoing.[724] As of October, it was publicly revealed that aspects of the probe had shifted to a criminal investigation.[725] As the White House explained when the President announced measures to ensure cooperation across the federal government with Mr. Durham's probe, his investigation will ''ensure that all Americans learn the truth about the events that occurred, and the actions that were taken, during the last Presidential election and will restore confidence in our public institutions.'' [726]

Asking for foreign assistance is also routine. Such requests for cooperation are common and take many different forms, both formal and informal.[727] Requests can be made pursuant to a Mutual Legal Assistance Treaty, and the U.S. has such a treaty with Ukraine that specifically authorizes requests for cooperation.[728] There can also be informal requests for assistance.[729] Because the President is the Chief Executive and chief law enforcement officer of the federal government—as well as the ''sole organ of the federal government in the field of international relations'' [730]—requesting foreign assistance is well within his ordinary role.

Given the self-evident national interest at stake in identifying any Ukrainian role in the 2016 election, House Democrats resort to distorting the President's words. They strain to recast his request to uncover historical *truth* about the last election as if it were something relevant only for the President's personal political interest in the *next* election. Putting words in the President's mouth, House Democrats pretend that, because the President mentioned a hacked DNC server, he must have been pursuing a claim that Ukraine ''rather than Russia'' had interfered in the 2016 election [731]—and that assertion, they claim, was relevant solely for boosting President Trump's 2020 presidential campaign. But that convoluted chain of reasoning is hopelessly flawed.

To start, simply asking about any Ukrainian involvement in the 2016 election—including with respect to hacking a DNC server—does not imply that Russia did *not* attempt to interfere with the 2016 election. It is entirely possible that foreign nationals from more than one country sought to interfere in our election by different means (or coordinated means), and for different reasons. Uncovering all the facts about any interference benefits the United States by laying bare all foreign attempts to meddle in our elections. And if the facts uncovered end up having any influence on the 2020 election, that would not be *improper*. House Democrats cannot place an inquiry into historical facts off limits based on fears that the facts might harm their interests in the next election.

In addition, House Democrats have simply misrepresented President Trump's words. The President did not ask narrowly about a DNC server alone, but rather raised a whole collection of issues related to the 2016 election. President Trump introduced the topic by noting that ''our country has been through a lot,'' [732] which referred to the entire Mueller investigation and false allegations about the Trump Campaign colluding with Russia. He then broadly expressed interest in ''find[ing] out what happened with this whole situation'' with Ukraine.[733] After mentioning a DNC server, the President made clear that he was casting a wider net as he said that ''[t]here are a lot of things that went on'' and again indicated that he was interested in ''the whole situation.'' [734] He then noted his concern that President Zelensky was ''surrounding [him]self with some of the same people.'' [735] President Zelensky clearly understood this to be a reference to Ukrainian officials who had sought to undermine then-candidate Trump during the campaign, as he responded by immediately noting that he ''just recalled our ambassador from [the] United States.'' [736] That ambassador, of course, had penned a harsh, undiplomatic op-ed criticizing then-candidate Trump, and it had been widely reported that a DNC operative met with Ukrainian embassy officials during the campaign to dig up information detrimental to President Trump's campaign.[737]

Notably, Democrats have not always believed that asking Ukraine for assistance in uncovering foreign election interference constituted a threat to the Republic. To the contrary, in 2018, three Democratic Senators—Senators Menendez, Leahy, and Durbin—asked Ukraine to cooperate with the Mueller investigation and ''strongly encourage[d]'' then-Prosecutor General Yuriy Lutsenko to ''halt any efforts to impede cooperation.'' [738] Not a single Democrat in either house has called for sanctions against them. Nothing that President Trump said went further than the senators' request, and efforts to claim that it was somehow improper are rank hypocrisy.

2. It Would Have Been Appropriate for President Trump To Ask President Zelensky About the Biden-Burisma Affair

House Democrats' theory that there could not have been any legitimate basis for a President of the United States to raise the Biden-Burisma affair with President Zelensky is also wrong. The following facts have been publicly reported:

Burisma is a Ukrainian energy company with a reputation for corruption. Lt. Col. Vindman called it a ''corrupt entity.'' [739] It was founded by a corrupt oligarch, Mykola Zlochevsky, who has been under several investigations for money laundering.[740]

Deputy Assistant Secretary of State Kent testified that Burisma's reputation was so poor that he dissuaded the United States Agency for International Development (USAID) from co-sponsoring an event with Burisma. He testified that he did not think co-sponsorship with a company of Burisma's reputation was ''appropriate for the U.S. Government.'' [741]

In April 2014, Hunter Biden was recruited to sit on Burisma's board.[742] At that time, his father had just been made the ''public face of the [Obama] administration's handling of Ukraine,'' [743] and Britain's Serious Fraud Office (SFO) had just recently frozen $23 million in accounts linked to Zlochevsky as part of a money-laundering investigation.[744] Zlochesvsky fled Ukraine sometime in 2014.[745]

Hunter Biden had no known qualifications for serving on Burisma's board of directors, and just two months before joining the board, he had been discharged from the Navy Reserve for testing positive for cocaine on a drug test.[746] He himself admitted in a televised interview that he would not have gotten the board position ''if [his] last name wasn't Biden.'' [747]

Nevertheless, Hunter Biden was paid more than board members at energy giants like ConocoPhillips.[748]

Multiple witnesses said it appeared that Burisma hired Hunter Biden for improper reasons.[749]

Hunter's role on the board raised red flags in several quarters. Chris Heinz, the step-son of then-Secretary of State John Kerry, severed his business relationship with Hunter, citing Hunter's ''lack of judgment'' in joining the Burisma board as ''a major catalyst.'' [750]

Contemporaneous press reports openly speculated that Hunter's role with Burisma might undermine U.S. efforts—led by his father—to promote an anti-corruption message in Ukraine.[751] Indeed, *The Washington Post* reported that ''[t]he appointment of the vice president's son to a Ukrainian oil board looks nepotistic at best, nefarious at worst.'' [752]

Within the Obama Administration, Hunter's position caused the special envoy for energy policy, Amos Hochstein, to ''raise[] the matter with Biden.'' [753] Deputy Assistant Secretary of State Kent testified that he, too, voiced concerns with Vice President Biden's office.[754]

In fact, every witness who was asked agreed that Hunter's role created at least the appearance of a conflict of interest for his father.[755]

On February 2, 2016, the Ukrainian Prosecutor General obtained a court order to seize Zlochevsky's property.[756]

According to press reports, Vice President Biden then spoke with Ukraine's President Poroshenko three times by telephone on February 11, 18, and 19, 2016.[757]

Vice President Biden has openly bragged that, around that time, he threatened President Poroshenko that he would withhold one billion dollars in U.S. loan guarantees unless the Ukrainians fired the Prosecutor General who was investigating Burisma.[758]

Deputy Assistant Secretary Kent testified that the Prosecutor General's removal ''became a condition of the loan guarantee.'' [759]

On March 29, 2016, Ukraine's parliament dismissed the Prosecutor General.[760] In September 2016, a Kiev court cancelled an arrest warrant for Zlochevsky.[761]

In January 2017, Burisma announced that all cases against the company and Zlochevsky had been closed.[762]

On these facts, it would have been wholly appropriate for the President to ask President Zelensky about the whole Biden-Burisma affair. The Vice President of the United States, while operating under an apparent conflict of interest, had possibly used a billion dollars in U.S. loan guarantees to force the dismissal of a prosecutor who may have been pursuing a legitimate corruption investigation. In fact, on July 22, 2019—just days before the July 25 call—*The Washington Post* reported that the fired prosecutor ''said he believes his ouster was because of his interest in [Burisma]'' and ''[h]ad he remained in his post . . . he would have questioned Hunter Biden.'' [763] Even if the Vice President's motives were pure, the possibility that a U.S. official used his position to derail a meritorious investigation made the Biden-Burisma affair a legitimate subject to raise. Indeed, any President would have wanted to make clear *both* that the United States was not placing any inquiry into the incident off limits *and* that, in the future, there would be no efforts by U.S. officials do something as ''horrible'' as strong-arming Ukraine into dropping corruption investigations while operating under an obvious conflict of interest.[764]

As the transcript shows, President Zelensky recognized precisely the point. He responded to President Trump by noting that ''[t]he issue of the investigation of the case is actually the issue of making sure to *restore the honesty*[.]'' [765]

It is absurd for House Democrats to argue that any reference to the Biden-Burisma affair had no purpose other than damaging the President's potential political opponent. The two participants on the call—the leaders of two sovereign nations—clearly understood the discussion to advance the U.S. foreign policy interest in ensuring that Ukraine's new President felt free, in President Zelensky's words, to ''restore the honesty'' to corruption investigations.[766]

Moreover, House Democrats' accusations rest on the false and dangerous premise that Vice President Biden somehow immunized his conduct (and his son's) from any scrutiny by declaring his run for the presidency. There is no such rule of law. It certainly was not a rule applied when President Trump was a candidate. His political opponents called for investigations against him and his children almost daily.[767] Nothing in the law requires the government to turn a blind eye to potential wrongdoing based on a person's status as a candidate for President of the United States. If anything, the possibility that Vice President Biden may ascend to the highest office in the country provides a compelling reason for ensuring that, when he forced Ukraine to fire its Prosecutor General, his family was not corruptly benefitting from his actions.

Importantly, mentioning the whole Biden-Burisma affair would have been entirely justified as long as there was a reasonable basis to think that *looking into* the matter would advance the public interest. To defend merely *asking a question*, the President would not bear any burden of showing that Vice President Biden (or his son) actually committed any wrongdoing.

By contrast, under their own theory of the case, for the House Managers to carry their burden of proving that merely raising the matter was ''illegitimate,'' they would have to prove that raising the issue could have no legitimate purpose whatsoever. Their theory is obviously false. And especially on this record, the House Managers cannot possibly carry that burden, because no such definitive proof exists. Nobody, not even House Democrats' own witnesses, could testify that the Bidens' conduct did not at least facially raise an appearance of a conflict of interest. And while House Democrats repeatedly insist that any suggestions that Vice President Biden or his son did anything wrong are ''debunked conspiracy theories'' and ''without merit,''[768] they lack any evidence to support those bald assertions, because they have steadfastly cut off any real inquiry into the Bidens' conduct. For example, they have refused to call Hunter Biden to testify.[769] Instead, they have been adamant that Americans must simply accept the diktat that the Bidens' conduct could not possibly have been part of a course of conduct in which the Office of the Vice President was misused to protect the financial interests of a family member.

The Senate cannot accept House Democrats' mere say-so as proof. Especially in the context of this wholly partisan impeachment, House Democrats' assurance of, ''trust us, there's nothing to see here,'' is not a permissible foundation for building a case to remove a duly elected President from office—especially given Chairman Schiff's track record for making false claims in order to damage the President.[770]

IV. The Articles Are Structurally Deficient and Can Only Result in Acquittal

The Articles also suffer from a fatal structural defect. Put simply, the articles are impermissibly duplicitous—that is, each article charges multiple different acts as possible grounds for sustaining a conviction.[771] The problem with an article offering such a menu of options is that the Constitution requires two-thirds of Senators present to agree on the specific basis for conviction. A vote on a duplicitous article, however, could never provide certainty that a two-thirds majority had actually agreed upon a ground for conviction. Instead, such a vote could be the product of an amalgamation of votes resting on several different theories, no single one of which would have garnered two-thirds support if it had been presented separately. Accordingly, duplicitous articles like those exhibited here are facially unconstitutional.

A. The Constitution Requires Two-Thirds of Senators To Agree on the Specific Act that Is the Basis for Conviction and Thus Prohibits Duplicitous Articles

In impeachment trials, the Constitution mandates that ''no Person shall be convicted without the Concurrence of two thirds of the Members present.''[772] That provision requires two-thirds agreement on the specific act that warrants conviction. That is why the Senate has repeatedly made clear in prior impeachments that acquittal is required when duplicitous articles are presented.

In the Clinton impeachment,[773] for example, Senator Carl Levin explained his vote to acquit by pointing out that the House had ''made a significant and irreparable mistake in the actual drafting of the articles.''[774] Because each article alleged multiple acts of wrongdoing, it would be ''impossible'' ever to determine ''whether a two-thirds majority of the Senate actually agreed on a particular allegation.''[775] Senator Charles Robb echoed those concerns, explaining that ''the unconstitutional bundling of charges'' in these articles ''violates this constitutional requirement'' of two-thirds agreement to convict.[776] As he pointed out, because Article II, in particular, ''contain[ed] 7 subparts each alleging a separate act of obstruction of justice, the bundling of these allegations would allow removal of the President if only 10 Senators agreed on each of the 7 separate subparts.''[777] Senator Chris Dodd agreed, explaining that ''[t]his smorgasbord approach to the allegations'' was a threshold legal flaw that even called for dismissal outright and pointed to the ''deeply troubling prospect'' of ''convict[ing] and remov[ing] without two-thirds of the Senate agreeing on precisely what [the President] did wrong.''[778]

The Senate similarly rejected a duplicitous article against President Andrew Johnson. That article alleged that Johnson had declared in a speech that the Thirty-Ninth Congress was not lawful and that he committed three different acts in pursuit of that declaration.[779] In opposing the article, Senator John Henderson emphasized ''the great difficulty'' presented by the omnibus article in ascertaining ''what it really charges.''[780] Senator Garrett Davis similarly complained that the allegations were apparently ''drawn with studied looseness, duplicity, and vagueness, as with the purpose to mislead'' and should have ''been separately'' and ''distinctly stated.''[781]

The Senate has also rejected unconstitutionally duplicitous articles of impeachment against judges. In the impeachment of Judge Nixon, for example, Senator Frank Murkowski rejected the ''the omnibus nature of article III,'' which charged the judge with making multiple different false statements, and he ''agree[d] with the argument that the article could easily be used to convict Judge Nixon by less than the super majority vote required by the Constitution.''[782] Senator Herbert Kohl explained why this defect was fatal: ''The House is telling us that it's OK to convict Judge Nixon on [the article] even if we have different visions of what he did wrong. But that's not fair to Judge Nixon, to the Senate, or to the American people.''[783]

B. The Articles Are Unconstitutionally Duplicitous

Here, each Article is impermissibly duplicitous. Each Article presents a smorgasbord of multiple, independent acts as possible bases for conviction. Under the umbrella charge of ''abuse of power,'' Article I offers Senators a menu of at least four different bases for conviction: (1) ''corruptly'' requesting that Ukraine announce an investigation into the Biden-Burisma affair; (2) ''corruptly'' requesting that Ukraine announce an investigation into alleged Ukrainian interference in the 2016 election; (3) ''corrupt[ly]'' conditioning the release of Ukraine's security assistance on these investigations; and (4) ''corrupt[ly]'' conditioning a White House meeting on these investigations.[784] Article II similarly invites Senators to pick and choose among at least 10 different bases for obstruction including: (1) directing the White House and agencies, ''without lawful cause or excuse,'' not to produce documents in response to a congressional subpoena; or (2) directing one or more of nine different individuals, ''without lawful cause or excuse,'' not to testify in response to a congressional subpoena.[785]

As a result, the Articles invite the danger of an unconstitutional conviction if less than two-thirds of Senators agree that any particular act was an abuse of power or obstruction. With at least four independent bases alleged for abuse of power, Article I invites conviction if as few as 18 Senators agree that any one alleged act occurred and constituted an abuse of power.

The deficiency in the articles cannot be remedied by dividing the articles, because that is prohibited.[786] The only constitutional option is to reject the articles and acquit the President.

CONCLUSION

The Articles of Impeachment presented by House Democrats are constitutionally deficient on their face. The theories underpinning them would do lasting damage to the separation of powers under the Constitution and to our structure of government. The Articles are also the product of an unprecedented and unconstitutional process that denied the President every basic right guaranteed by the Due Process Clause and fundamental principles of fairness. These Articles reflect nothing more than the ''persecution of an intemperate or designing majority in the House of Representatives''[787] that the Framers warned against. The Senate should reject the Articles of Impeachment and acquit the President immediately.

Respectfully submitted,

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January 20, 2020.

ENDNOTES

1. U.S. Const. art. II, §4.

2. 4 William Blackstone, *Commentaries on the Laws of England* *256.

3. *See Impeachment Inquiry into President Donald J. Trump: Constitutional Grounds for Presidential Impeachment Before the H.R. Comm. on the Judiciary*, 116th Cong. (2019) (written statement of Professor Jonathan Turley, Geo. Wash. Univ. Law Sch., at 15, https://perma.cc/QU4H-FZC4); H.R. Res. 611, 106th Cong. (1998); H.R. Comm. on the Judiciary, *Impeachment of William Jefferson Clinton, President of the United States*, H.R. Rep. No.

105–830, 105th Cong. 143 (1998) (additional views of Rep. Bill McCollum); H.R. Comm. on the Judiciary, *Impeachment of Richard M. Nixon, President of the United States*, H.R. Rep. No. 93–1305, 93d Cong. 1–3 (1974).

4. H.R. Comm. on the Judiciary, *Impeachment of Donald J. Trump, President of the United States*, H.R. Rep. No. 116–346, 116th Cong. 99 (2019) (HJC Report).

5. *Id.*

6. *Id.* at 103; *see also* Trial Mem. of the U.S. House of Representatives at 4.

7. U.S. Const. art. II, §1.

8. HJC Report at 101.

9. *See id.* at 102.

10. H.R. Res. 755, 116th Cong. art. II (2019).

11. This advice was memorialized in a written opinion on January 19, 2020, which is attached as Appendix C. *See* Memorandum from Steven A. Engel, Assistant Attorney General, Office of Legal Counsel, to Pat A. Cipollone, Counsel to the President, *Re: House Committees' Authority to Investigate for Impeachment*, at 1 (Jan. 19, 2020) (*Impeachment Inquiry Authorization*).

12. *Testimonial Immunity Before Congress of the Former Counsel to the President*, 43 Op. O.L.C. __, *1 (May 20, 2019); *see also infra* note 296 (collecting prior opinions).

13. *See Assertion of Executive Privilege with Respect to Clemency Decision*, 23 Op. O.L.C. 1, 5 (1999) (emphasis added).

14. *Exclusion of Agency Counsel from Congressional Depositions in the Impeachment Context*, 43 Op. O.L.C. __, at *4 (Nov. 1, 2019).

15. *Bordenkircher* v. *Hayes*, 434 U.S. 357, 363 (1978) (citations omitted); *see also*, *e.g.*, *United States* v. *Goodwin*, 357 U.S. 368, 372 (1982) (''For while an individual certainly may be penalized for violating the law, he just as certainly may not be punished for exercising a protected statutory or constitutional right.'').

16. Harvey Berkman, *Top Profs: Not Enough to Impeach*, The National Law J. (Oct. 5, 1998) (quoting Professor Tribe), *reprinted in* 144 Cong. Rec. H10031 (1998).

17. H.R. Comm. on the Judiciary, 105th Cong., Ser. No. 18, Impeachment Inquiry: William Jefferson Clinton, President of the United States, Consideration of Articles of Impeachment 398 (Comm. Print 1998).

18. *See* Transcript of Pelosi Weekly Press Conference Today (Oct. 2, 2019) (statement of Rep. Adam Schiff), https://perma.cc/RM2N-F2RC.

19. Turley Written Statement, *supra* note 3, at 42 (emphasis added) (ellipsis in original).

20. 3 *The Debates in the Several State Conventions, on the Adoption of the Federal Constitution, as Recommended by the General Convention at Philadelphia, in 1787*, 401 (J. Elliot ed. 1836).

21. U.S. Const. art. I, §2, cl. 5.

22. *Watkins* v. *United States*, 354 U.S. 178, 200–10 (1957); *see also United States* v. *Rumely*, 345 U.S. 41, 42–43 (1953); *Exxon Corp.* v. *FTC*, 589 F.2d 582, 592 (D.C. Cir. 1978) (''To issue a valid subpoena, . . . a committee or subcommittee must conform strictly to the resolution establishing its investigatory powers . . . .''); *Tobin* v. *United States*, 306 F.2d 270, 275 (D.C. Cir. 1962) (''[T]he first issue we must decide is whether Congress gave the Judiciary Committee . . . authority . . . to conduct the sweeping investigation undertaken in this case.'').

23. Speaker Pelosi Announcement of Impeachment Inquiry, C-SPAN (Sept. 24, 2019), https://www.c-span.org/video/?464684-1/speaker-pelosi-announces-formal-impeachment-inquiry-president-trump.

24. *See Impeachment Inquiry Authorization*, *infra* Appendix C, at 1–3.

25. *Perry* v. *Leeke*, 488 U.S. 272, 283 n.7 (1989) (quoting 5 J. Wigmore, *Evidence* §1367 (J. Chadbourn ed. 1974)).

26. *See*, *e.g.*, Andrew Prokop, *Why Democrats Are Moving So Fast on Impeachment*, Vox (Dec. 5, 2019), https://perma.cc/H7BR-HNC4 (''House leaders have signaled they hope to wrap up proceedings in their chamber before Congress leaves for the December holidays . . . . 'Wouldn't that be a great Christmas gift for it to all wrap up by Christmas?' Rep. Val Demings (D–FL) asked.''); Mary Clare Jalonick, *What's Next in Impeachment: A Busy December, and on to 2020*, AP News (Nov. 23, 2019), https://perma.cc/2HJH-QLMR (''Time is running short if the House is to vote on impeachment by Christmas, which Democrats privately say is the goal.'').

27. *Examining the Allegations of Misconduct Against IRS Commissioner John Koskinen (Part II): Hearing Before the H.R. Comm. on the Judiciary*, 114th Cong. 3 (2016) (statement of Rep. Jerrold Nadler).

28. *Background and History of Impeachment: Hearing Before the Subcomm. on the Constitution of the H.R. Comm. on the Judiciary*, 105th Cong. 17 (1998) (statement of Rep. Jerrold Nadler).

29. Alex Rogers, *Whistleblower Went to Intelligence Committee for Guidance Before Filing Complaint*, CNN (Oct. 2, 2019), https://perma.cc/5NVZ-W78H.

30. Zack Stanton, *Pelosi: Unless We Impeach Trump, 'Say Hello to a President-King'*, Politico (Dec. 18, 2019), https://perma.cc/XLX5-XE7Z.

31. Matea Gold, *The Campaign to Impeach President Trump Has Begun*, Wash. Post (Jan. 20, 2017), https://perma.cc/2376-PS6U.

32. Mark S. Zaid (@MarkSZaidEsq), Twitter (Jan. 30, 2017 6:54 PM), https://perma.cc/BFV6-MKRE.

33. Katelyn Polantz, *Mueller Investigation Cost $32 Million, Justice Department Says*, CNN (July 24, 2019), https://perma.cc/DX6K-58Y3; Special Counsel Robert S. Mueller, III, *Report on the Investigation into Russian Interference in the 2016 Presidential Election*, vol. I at 13 (Mar. 2019), https://perma.cc/EGB4-WA76.

34. Rebecca Shabad and Alex Moe, *Impeachment Inquiry Ramps up as Judiciary Panel Adopts Procedural Guidelines*, NBC News (Sept. 12, 2019), https://perma.cc/4H7N-6ZPD.

35. *See* Clerk, H.R., Final Vote Results for Roll Call 695 on Agreeing to Article I of the Resolution (Dec. 18, 2019), http://clerk house.gov/evs/2019/roll695.xml; Clerk, H.R., Final Vote Results for Roll Call 696 on Agreeing to Article II of the Resolution (Dec. 18, 2019), http://clerk.house.gov/evs/2019/roll696.xml.

36. 144 Cong. Rec. H11786 (1998) (statement of Rep. Jerrold Nadler).

37. 145 Cong. Rec. S1582 (1999) (statement of Sen. Patrick Leahy).

38. 144 Cong. Rec. H11786 (1998) (statement of Rep. Jerrold Nadler).

39. Nicole Gaudiano and Eliza Collins, *Exclusive: Nancy Pelosi Vows 'Different World' for Trump, No More 'Rubber Stamp' in New Congress*, USA Today (Jan. 3, 2019), https://perma.cc/55PK-3PZL.

40. Tierney Sneed, *DOJ Declined to Act on Criminal Referral in Trump's Ukraine Smear Campaign*, Talking Points Memo (Sept. 25, 2019), https://perma.cc/HA3M-FBGU (quoting Statement of Kerri Kupec, Spokesperson for the Department of Justice).

41. *Impeachment Inquiry: Ambassador Gordon Sondland Before the H.R. Permanent Select Comm. on Intelligence*, 116th Cong. 148–49 (Nov. 20, 2019) (Sondland Public Hearing).

42. *Id.* at 150–51.

43. G. Sondland Interview Tr. at 297:22–298:1 (Oct. 17, 2019).

44. Sondland Public Hearing, *supra* note 41, at 70.

45. K. Volker Interview Tr. at 36:1–9 (Oct. 3, 2019).

46. *Id.*

47. Sondland Public Hearing, *supra* note 41, at 40.

48. Letter from Sen. Ron Johnson to Jim Jordan, Ranking Member, H.R. Comm. on Oversight & Reform, and Devin Nunes, Ranking Member, H.R. Permanent Select Comm. on Intelligence, at 6 (Nov. 18, 2019).

49. Memorandum of Tel. Conversation with President Zelensky of Ukraine, at 2 (July 25, 2019) (July 25 Call Mem.). The transcript is attached as Appendix A.

50. M. Yovanovitch Dep. Tr. at 140:24–141:3 (Oct. 11, 2019); *see also Impeachment Inquiry: Ambassador Marie ''Masha'' Yovanovitch Before The H.R. Permanent Select Comm. on Intelligence*, 116th Cong. 76–77 (Nov. 15, 2019) (Yovanovitch Public Hearing).

51. W. Taylor Dep. Tr. at 155:2–156:6 (Oct. 22, 2016).

52. Turley Written Statement, *supra* note 3, at 4.

53. Trial Mem. of the U.S. House of Representatives at 24; HJC Report at 4, 6.

54. H.R. Res. 755 art. I.

55. Trial Mem. of the U.S. House of Representatives at 2, 18; HJC Report at 10.

56. *Impeachment Inquiry: Dr. Fiona Hill and Mr. David Holmes Before the H.R. Permanent Select Comm. on Intelligence*, 116th Cong. 112:2–9 (Nov. 21, 2019) (Hill-Holmes Public Hearing).

57. Michael Kranish & David L. Stern, *As Vice President, Biden Said Ukraine Should Increase Gas Production. Then His Son Got a Job with a Ukrainian Gas Company*, Wash. Post (July 22, 2019), https://perma.cc/6JD2-KFCN (''In an email interview with The Post, Shokin [the fired prosecutor] said he believes his ouster was because of his interest in [Burisma] . . . . Had he remained in his post, Shokin said, he would have questioned Hunter Biden.'').

58. *Compare* Tobias Hoonhout, *Hunter Biden Served as 'Ceremonial Figure' on Burisma Board for $80,000 Per Month*, National Rev. (Oct. 18, 2019), https://perma.cc/7WBU-XHCJ (reporting Hunter Biden's monthly compensation to be $83,333 monthly, or nearly $1 million per year), *with* 2019 Proxy Statement, ConocoPhillips, at 30 (Apr. 1, 2019), https://perma.cc/8HK2-XJTL (showing director compensation averaging approximately $302,000), and ConocoPhillips, Fortune 500, https://fortune.com/fortune500/2019/conocophillips/ (listing ConocoPhillips as #86).

59. *See*, *e.g.*, Hill-Holmes Public Hearing, *supra* note 56, at 89–90; *Impeachment Inquiry: Ms. Jennifer Williams & Lt. Col. Alexander Vindman*, 116th Cong. 129 (Nov. 19, 2019); Yovanovitch Public Hearing, *supra* note 50, at 135–36; Taylor Dep. Tr. at 90:3–5; G. Kent Interview Tr. at 227:3–8 (Oct. 15, 2019); *Impeachment Inquiry: Ambassador William B. Taylor & Mr. George Kent Before the H.R. Permanent Select Comm. on Intelligence*, 116th Cong. 148:23–25 (Nov. 13, 2019); *see also* Sondland Public Hearing, supra note 41, at 171.

60. Adam Taylor, *Hunter Biden's New Job at a Ukrainian Gas Company is a Problem for U.S. Soft Power*, Wash. Post (May 14, 2014), https://perma.cc/7DNH-GPF4.

61. Kent Interview Tr. at 227:1–23; Adam Entous, *Will Hunter Biden Jeopardize His Father's Campaign?*, The New Yorker (July 1, 2019), https://perma.cc/WB24-FTJG.

62. Rules of Procedure and Practice in the Senate when Sitting on Impeachment Trials, Rule XXIII (1986), *in* Senate Manual Containing the Standing Rules, Orders, Laws and Resolutions Affecting the Business of the United States Senate, S. Doc. 113–1, 113th Cong. 228 (2014).

63. The Federalist No. 65, at 400 (Alexander Hamilton) (Clinton Rossiter ed., 1961).

64. Letter from Thomas Jefferson to James Madison (Feb. 15, 1798), *in 3 Memoir, Correspondence, and Miscellanies, from the Papers of Thomas Jefferson* 373 (Thomas Jefferson Randolph ed., 1830).

65. 2 Joseph Story, *Commentaries on the Constitution* §743 (1833).

66. The Federalist No. 66, at 402 (Alexander Hamilton) (Clinton Rossiter ed., 1961).

67. *Trial of Andrew Johnson, President of the United States, Before the Senate of the United States on Impeachment by the House of Representatives for High Crimes and Misdemeanors,* 40th Cong., vol. III, at 328 (1868) (opinion of Sen. Lyman Trumbull).

68. The Federalist No. 65, at 400 (Alexander Hamilton) (Clinton Rossiter ed., 1961).

69. U.S. Const. art. I, §3, cl. 6.

70. Michael J. Gerhardt, *The Lessons of Impeachment History,* 67 Geo. Wash. L. Rev. 603, 617 (1999) (noting that, ''[g]iven the division of impeachment authority between the House and the Senate, the Senate has . . . the opportunity to review House decisions on what constitutes an impeachable offense'' and has rejected House judgments in the past).

71. *Proceedings in the Trial of Andrew Johnson, President of the United States, Before the U.S. Senate on Articles of Impeachment,* 40th Cong. 524 (1868).

72. *Id.*

73. *See, e.g.*, Raoul Berger, *Impeachment: The Constitutional Problems* 86 (1973).

74. U.S. Const. art. II, §4.

75. *Circuit City Stores* v. *Adams,* 532 U.S. 105, 114–15 (2001) (quoting 2A N. Singer, *Sutherland on Statutes and Statutory Construction* §47.17 (1991)).

76. *Background and History of Impeachment: Hearing Before the Subcomm. on the Constitution of the H.R. Comm. on the Judiciary,* 105th Cong. 69 (1998) (*Clinton Judiciary Comm. Hearing on Background of Impeachment*) (statement of Professor Matthew Holden, Jr., Univ. of Va., Dept. of Gov't and Foreign Affairs) (''[I]t seems that this late-added provision refers to such '*other* high Crimes and Misdemeanors,' as would be comparable in their significance to 'treason' and 'bribery.' ''); Arthur M. Schlesinger, Jr., *Reflections on Impeachment,* 67 Geo. Wash. L. Rev. 693, 693 (1999) (''According to the legal rule of construction *ejusdem generis*, the other high crimes and misdemeanors must be on the same level and of the same quality as treason and bribery.'').

77. U.S. Const. art. III, §3, cl. 1. This definition is repeated in the United States criminal code: ''Whoever, owing allegiance to the United States, levies war against them or adheres to their enemies, giving them aid and comfort within the United States or elsewhere, is guilty of treason . . . .'' 18 U.S.C. §2381 (2018).

78. *Proceedings of the U.S. Senate in the Impeachment Trial of President William Jefferson Clinton, Vol. IV: Statements of Senators Regarding the Impeachment Trial of William Jefferson Clinton,* S. Doc. 106–4 at 2861 (1999) (*Clinton Senate Trial*) (statement of Sen. Patrick J. Leahy).

79. *See Clinton Judiciary Comm. Hearing on Background of Impeachment, supra* note 76, at 40 (statement of Gary L. McDowell, Director, Inst. for U.S. Studies, Univ. of London) (''[T]he most dominant source of authority on the common law for those who wrote and ratified the Constitution was Sir William Blackstone and his justly celebrated *Commentaries on the Laws of England* (1765–69). That was a work that was described by Madison in the Virginia ratifying convention as nothing less than 'a book which is in every man's hand.' ').

80. 4 William Blackstone, *Commentaries on the Laws of England* *139.

81. Akhil Reed Amar, *On Impeaching Presidents,* 28 Hofstra L. Rev. 291, 302 (1999).

82. Charles L. Black, Jr. & Philip Bobbitt, *Impeachment: A Handbook* 110 (2018). Gouverneur Morris's comments at the Constitutional Convention indicate the paradigm of bribery that the Framers had in mind as he cited King Louis XIV of France's bribe of England's King Charles II and argued, ''no one would say that we ought to expose ourselves to the danger of seeing the first Magistrate in foreign pay without being able to guard [against] it by displacing him.'' 2 *The Records of the Federal Convention of 1787,* at 68–69 (Max Farrand ed., 1911).

83. U.S. Const. art. I, §3, cl. 6; art. II, §4.

84. U.S. Const. art. I, §3, cl. 7 (emphasis added).

85. U.S. Const. art. I, §3, cl. 6 (emphasis added).

86. *Id.*

87. U.S. Const. art. III, §2, cl. 3 (''The Trial of all Crimes, except in Cases of Impeachment, shall be by Jury . . . .''); U.S. Const. art. II, §2, cl. 1 (''[H]e shall have Power to grant Reprieves and Pardons for Offenses against the United States, except in Cases of Impeachment.'').

88. *See* 4 Blackstone, *Commentaries* *74–75.

89. *See* Berger, *supra* note 73, at 71.

90. *Id.* at 86–87. Shortly before the Convention agreed to the ''high Crimes and Misdemeanors'' standard, delegates rejected the use of ''high misdemeanor'' in the Extradition Clause because ''high misdemeanor'' was thought to have ''a technical meaning too limited.'' *2 Records of the Federal Convention, supra* note 82, at 443; *see also* Berger, *supra* note 73, at 74.

91. 4 Blackstone, *Commentaries* *256 (emphasis added). Blackstone, in fact, listed numerous ''high misdemeanors'' that might subject an official to impeachment, including ''maladministration.'' *Id.* at *121.

92. 2 *Records of the Federal Convention, supra* note 82, at 499.

93. *Id.* at 550.

94. *Id.*

95. *Id.*

96. *Id.* ''The conscious and deliberate character of [the Framers'] rejection [of 'maladministration'] is accentuated by the fact that a good many state constitutions of the time did have 'maladministration' as an impeachment ground.'' Black & Bobbitt, *supra* note 82, at 27.

97. 2 *Records of the Federal Convention, supra* note 82, at 64.

98. *Id.* at 337.

99. 4 *The Debates in the Several State Conventions on the Adoption of the Federal Constitution,* at 127 (Jonathan Elliot 2nd ed. 1987).

100. 3 *The Debates in the Several State Conventions on the Adoption of the Federal Constitution,* at 401 (Jonathan Elliot 2nd ed. 1987).

101. Berger, *supra* note 73, at 86.

102. *Clinton Senate Trial, supra* note 78, vol. IV at 2842 (statement of Sen. Patrick J. Leahy); *see also id.* at 2883 (statement of Sen. James M. Jeffords) (''The framers intentionally set this standard at an extremely high level to ensure that only the most serious offenses would justify overturning a popular election.'').

103. 2 Joseph Story, *Commentaries on the Constitution* §749 (1833); *see also* 1 James Bryce, *The American Commonwealth* 283 (1888) (''Impeachment . . . is the heaviest piece of artillery in the congressional arsenal, but because it is so heavy it is unfit for ordinary use. It is like a hundred-ton gun which needs complex machinery to bring it into position, an enormous charge of powder to fire it, and a large mark to aim at.'').

104. Black & Bobbitt, *supra* note 82, at 111.

105. The Declaration of Independence para. 2 (U.S. 1776).

106. Laurence H. Tribe, *Defining ''High Crimes and Misdemeanors'': Basic Principles,* 67 Geo. Wash. L. Rev. 712, 723 (1999).

107. 144 Cong. Rec. H10018 (1998) (statement of Rep. Jerrold Nadler).

108. *Id.* at H11786 (statement of Rep. Jerrold Nadler).

109. *Clinton Senate Trial, supra* note 78, vol. IV at 2578, 2580 (statement of Sen. Joseph R. Biden, Jr.).

110. U.S. Const. art. II, §1.

111. *See Clinton* v. *Jones,* 520 U.S. 681, 712 (1997) (Breyer, J., concurring in the judgment).

112. Tribe, *supra* note 106, at 723. The unique importance of a presidential impeachment is reflected in the text of the Constitution as it requires, in contrast to all other cases of impeachment, that the Chief Justice of the United States preside over any Senate trial of a President. U.S. Const. art. I, §3, cl. 6.

113. *Nixon* v. *Fitzgerald,* 457 U.S. 731, 750 (1982).

114. U.S. Const. art. II, §3.

115. U.S. Const. art. II, §2, cl. 1.

116. *United States* v. *Curtiss-Wright Export Corp.*, 299 U.S. 304, 320 (1936).

117. Memorandum from Robert G. Dixon, Jr., Assistant Attorney General, Office of Legal Counsel, *Re: Amenability of the President, Vice President and other Civil Officers to Federal Criminal Prosecution While in Office,* at 32 (Sept. 24, 1973).

118. *Clinton Senate Trial, supra* note 78, vol. IV at 2793 (statement of Sen. Bob Graham).

119. H.R. Res. 611, 105th Cong. (1998); H.R. Comm. on the Judiciary, *Impeachment of William Jefferson Clinton, President of the United States,* H.R. Rep. No. 105–830, 105th Cong. 143 (1998) (additional views of Rep. Bill McCollum) (''President Clinton actively sought to thwart the due administration of justice by repeatedly committing the felony crimes of perjury, witness tampering, and obstruction of justice.'').

120. H.R. Comm. on the Judiciary, *Impeachment of Richard M. Nixon, President of the United States,* H.R. Rep. No. 93–1305, 93d Cong. 1–4 (1974); *see also id.* at 3 (alleging that Nixon ''violat[ed] the constitutional rights of citizens'' and ''contravene[ed] the laws governing agencies of the executive branch.'').

121. *Id.* at 34 (asserting that Nixon ''caused action . . . to cover up the Watergate breakin. This concealment required perjury, destruction of evidence, obstruction of justice—all of which are crimes'').

122. Article II claimed that President Nixon ''violat[ed] the rights of citizens,'' ''contraven[ed] the laws governing agencies of the executive branch,'' and ''authorized and permitted to be maintained a secret investigative unit within the Office of the President . . . [that] engaged in covert and unlawful activities.'' *Id.* at 3. Although the House Judiciary Committee's report described Article II generally as involving ''abuse of the powers of the office of President,'' *id.* at 139, that was not the actual *charge* included in the articles of impeachment. The actual charges in the recommended article of impeachment included specific violations of laws.

123. H.R. Rep. Com. No. 7, 40th Cong. 60 (1867) (emphasis added).

124. Cong. Globe, 40th Cong., 2d Sess. app. 63 (1867).

125. Michael Les Benedict, *The Impeachment and Trial of Andrew Johnson* 102 (1973).

126. Cong. Globe, 40th Cong., 2d Sess., 1616–18, 1638–42 (1868).

127. *See, e.g.*, Berger, *supra* note 73, at 56–57. Some scholars dispute the characterization that many judicial impeachments do not involve charges that amount to violations of law. *See, e.g.*, Frank Thompson, Jr., & Daniel H. Pollitt, *Impeachment of Federal Judges: An Historical Overview,* 49 N.C. L. Rev. 87, 118 (1970) (''Except for a few abberations [sic] in the early-1800[s] period of unprecedented political upheaval, Congress has refused to impeach a judge for lack of 'good behaviour' unless the behavior was both job-related and criminal.'').

128. U.S. Const. art. III, 1; *see also* John R. Labovitz, *Presidential Impeachment* 92–93 (1978) (The Good Behavior Clause ''could be interpreted as a separate standard for the impeachment of judges or it could be interpreted as an aid in applying the term 'high crimes and misdemeanors' to judges. Whichever interpretation was adopted, it was clear that the clause made a difference in judicial impeachments, confounding the application of these cases to presidential impeachment.''); *Clinton Senate Trial*, *supra* note 78, vol. IV at 2692 (statement of Sen. Max Cleland) (citing the ''Good Behaviour'' clause and explaining ''that there is indeed a different legal standard for impeachment of Presidents and Federal judges'').

129. Amar, *supra* note 81, at 304.

130. *See* Cass R. Sunstein, *Impeaching the President*, 147 U. Pa. L. Rev. 279, 304 (1998).

131. Black & Bobbitt, *supra* note 82, at 119.

132. *Clinton Senate Trial*, *supra* note 78, vol. IV at 2575 (statement of Sen. Joseph R. Biden, Jr.). Numerous other Senators distinguished the lower standard for judicial impeachments. *See*, *e.g.*, *id.* at 2692 (statement of Sen. Max Cleland) (''After review of the record, historical precedents, and consideration of the different roles of Presidents and Federal judges, I have concluded that there is indeed a different legal standard for impeachment of Presidents and Federal judges.''); *id.* at 2811 (statement of Sen. Edward M. Kennedy) (''Removal of the President of the United States and removal of a Federal judge are vastly different.'').

133. Sunstein, *supra* note 130, at 300; *see also Clinton Judiciary Comm. Hearing on Background of Impeachment*, *supra* note 76, at 350 (statement of Professors Frank O. Bowman, III, Stephen L. Sepinuck, Gonzaga University School of Law) (''[C]omparative analysis suggests that Congress has applied a discernibly different standard to the removal of judges.'').

134. To the extent that the Senate voted in the impeachment trial of Judge Claiborne not to require all Senators to apply the beyond-a-reasonable-doubt standard, *see* 132 Cong. Rec. 29,153 (1986), that decision in a *judicial* impeachment has little relevance here.

135. *Clinton Senate Trial*, *supra* note 78, vol. IV at 3052 (statement of Sen. Russell D. Feingold); *see also id.* at 2563 (statement of Sen. Patty Murray) (''If we are to remove a President for the first time in our Nation's history, none of us should have any doubts.'').

136. *See*, *e.g.*, *Proceedings of the U.S. Senate in the Impeachment Trial of President William Jefferson Clinton*, *Volume II: Floor Trial Proceedings*, S. Doc. 106–4 at 1876 (1999) (statement of Sen. Chris Dodd); *Clinton Senate Trial*, *supra* note 78, vol. IV at 2548 (statement of Sen. Kay Bailey Hutchison); *id.* at 2559 (statement of Sen. Kent Conrad); *id.* at 2562 (statement of Sen. Tim Hutchinson); *id.* at 2642 (statement of Sen. George V. Voinovich).

137. *Id.* at 2623 (statement of Sen. Barbara A. Mikulski).

138. U.S. Const. art. I, §2, cl. 5; *id.* at §3, cl. 6.

139. 1 John Ash, *New and Complete Dictionary of the English Language* (1775) (definition of ''impeachment'': ''[a] public charge of something criminal, an accusation'').

140. Black & Bobbitt, *supra* note 82, at 14.

141 *Cole* v. *Arkansas*, 333 U.S. 196, 201 (1948) (emphases added).

142. *Stirone* v. *United States*, 361 U.S. 212, 217 (1960).

143. *Id.*

144. July 25 Call Mem., *infra* Appendix A.

145. Julian Barns et al., *Schiff Got Early Account of Accusations as Whistle-Blower's Concerns Grew*, N.Y. Times (Oct. 2, 2019), https://perma.cc/5KWF-U7ZS.

146. Ellen Nakashima, *Whistleblower Sought Informal Guidance from Schiff's Committee Before Filing Complaint Against Trump*, Wash. Post (Oct. 2, 2019), https://perma.cc/23UT-BGJL.

147. Mark S. Zaid (@MarkSZaidEsq), Twitter (Jan. 30, 2017, 6:54 PM), https://perma.cc/Z9LS-TDM2 (''#coup has started. First of many steps. #rebellion. #impeachment will follow ultimately. #lawyers.'').

148. Letter from IC Staffer to Richard Burr, Chairman, S. Comm. on Intelligence, and Adam Schiff, Chairman, H.R. Permanent Select Comm. on Intelligence (Aug. 12, 2019), https://perma.cc/MT4D–634A.

149. Letter from Michael K. Atkinson, Inspector General of the Intelligence Community, to Joseph Maguire, Acting Director of National Intelligence, at 5 (Aug. 26, 2019), https://perma.cc/2SV7–BUP5.

150. Speaker Pelosi Announcement of Impeachment Inquiry, C-SPAN (Sept. 24, 2019), https://www.c-span.org/video/?464684–1/speaker-pelosi-announces-formal-impeachment-inquiry-president-trump.

151. Donald J. Trump (@realDonaldTrump), Twitter (Sept. 24, 2019, 11:12 AM), https://perma.cc/UZ4E-D3ST (''I am currently at the United Nations representing our Country, but have authorized the release tomorrow of the complete, fully declassified and unredacted transcript of my phone conversation with President Zelensky of Ukraine.'').

152. July 25 Call Mem., *infra* Appendix A.

153. *Whistleblower Disclosure: Hearing Before the H.R. Permanent Select Comm. on Intelligence*, 116th Cong. (Sept. 26, 2019).

154. K. Volker Interview Tr. (Oct. 3, 2019).

155. H.R. Res. 660, 116th Cong. (2019).

156. *Id.*

157. Press Release, H.R. Permanent Select Comm. on Intelligence, *House Intelligence Committee Releases Draft Report as Part of Impeachment Inquiry* (Dec. 3, 2019), https://perma.cc/B23P–7NBD.

158. *The Impeachment Inquiry into President Donald J. Trump: Constitutional Grounds for Presidential Impeachment: Hearing Before the H.R. Comm. on Judiciary*, 116th Cong. (Dec. 4, 2019).

159. Nicholas Fandos, *Pelosi Says House Will Draft Impeachment Charges Against Trump*, N.Y. Times (Dec. 5, 2019), https://perma.cc/T7SC-W2VX.

160. *The Impeachment Inquiry into President Donald J. Trump: Presentations from the House Permanent Select Comm. on Intelligence and House Judiciary Comm.: Hearing Before the H.R. Comm. on Judiciary*, 116th Cong. (Dec. 9, 2019).

161. Press Release, H.R. Comm. on Judiciary, *Chairman Nadler Announces the Introduction of Articles of Impeachment Against President Donald J. Trump* (Dec. 10, 2019), https://perma.cc/9ERV–9PZX.

162. *House Judiciary Passes Articles of Impeachment Against President Trump*, C-SPAN (Dec. 13, 2019), https://www.c-span.org/video/?467395-1/house-judiciary-committee-approves-articles-impeachment-23-17.

163. H.R. Res. 755, 116th Cong. (2019); Clerk, H.R., Final Vote Results for Roll Call 695 on Agreeing to Article I of the Resolution (Dec. 18, 2019), http://clerk.house.gov/evs/2019/roll695.xml; Clerk, H.R., Final Vote Results for Roll Call 696 on Agreeing to Article II of the Resolution (Dec. 18, 2019), http://clerk.house.gov/evs/2019/roll696.xml.

164. HJC Report at 129–30.

165. U.S. Const. art. I, §3, cl. 6.

166. U.S. Const. art. II, §4.

167. HJC Report at 44.

168. *See id.* at 48–53; Trial Mem. of U.S. House of Representatives at 10–11.

169. *See supra* Standards Part B.1.

170. U.S. Const. art. II, §4.

171. 4 William Blackstone, *Commentaries on the Laws of England* *256 (emphasis added).

172. *Background and History of Impeachment: Hearing Before the Subcomm. on the Constitution of the H.R. Comm. on the Judiciary*, 105th Cong. 48 (1998) (''Of these distinctive features, the one of greatest contemporary concern is the founders' choice of the words—treason, bribery, and other high crimes and misdemeanors'—for the purpose of narrowing the scope of the federal impeachment process.'') (statement of Professor Michael Gerhardt) *(Clinton Judiciary Comm. Hearing on Background of Impeachment)*.

173. The Federalist No. 48, at 309 (James Madison) (Clinton Rossiter ed., 1961).

174. Jack N. Rakove, *Statement on the Background and History of Impeachment*, 67 Geo. Wash. L. Rev. 682, 688 (1999). The Framers' ''predominant fear'' was ''oppression at the hands of Congress.'' Raoul Berger, *Impeachment: The Constitutional Problems* 4 (1973); *see also Consumer Energy Council of Am.* v. *Fed. Energy Regulatory Comm'n*, 673 F.2d 425, 464 (D.C. Cir. 1982) (''Perhaps the greatest fear of the Framers was that in a representative democracy the Legislature would be capable of using its plenary lawmaking power to swallow up the other departments of the Government.''); Ronald C. Kahn, *Process and Rights Principles in Modern Constitutional Theory: The Supreme Court and Constitutional Democracy*, 37 Stan. L. Rev. 253, 260 (1984) (''[T]he Framers' greatest fear was the unlawful use of legislative power.''). The ratification debates also reflected fear of Congress. Berger, *supra*, at 119.

175. 2 *The Records of the Federal Convention of 1787*, at 66 (Max Farrand ed., 1911) *(Records of the Federal Convention)* (Charles Pinckney).

176. *Id.* at 69 (Gouverneur Morris).

177. *Id.* at 65.

178. *See supra* notes 92–100 and accompanying text.

179. 2 *Records of the Federal Convention*, *supra* note 175, at 550 (James Madison).

180. Alexander Hamilton's description in Federalist No. 65 does not support House Democrats' theory of a vague abuse-of-power offense. In an often-cited passage, Hamilton observed that the subjects of impeachment are ''offenses which proceed from the misconduct of public men, or, in other words, from the abuse or violation of some public trust.'' The Federalist No. 65, at 396 (Alexander Hamilton) (Clinton Rossiter ed., 1961). Hamilton was merely noting fundamental *characteristics* common to impeachable offenses—that they involve (or ''proceed from'') misconduct in public office or abuse of public trust. He was no more saying that ''abuse or violation of some public trust'' provided, in itself, the *definition* of a chargeable offense than he was saying that ''misconduct of public men'' provided such a definition.

181. III Hinds' Precedents 2361, at 763 (1907) (Hinds' Precedents). Justice Chase was acquitted by the Senate. *Id.* at §2363, at 770–71. He had been charged with purported offenses that turned largely on claims that he had misapplied the law in his rulings while sitting as a circuit justice. *See* William H. Rehnquist, *Grand Inquests* 76–77, 114 (1992). His acquittal has been credited with having ''a profound effect on the American judiciary,'' because the Senate's rejection of the charges was widely viewed as ''safeguard[ing] the independence'' of federal judges. *Id.* at 114.

182. HJC Report at 5.

183. *See*, *e.g.*, *id.* at 38–40.

184. *Id.* at 39. House Democrats rely on several secondary sources, each of which extracts general categories of impeachment cases from specific prosecutions. *See*, *e.g.*, Berger, *supra* note 174, at 70 (asserting that impeachment cases are ''reducible to intelligible categories'' including those involving ''abuse of official power''); Staff of H.R. Comm. on the Judiciary, 93d Cong., *Constitutional Grounds for Presidential Impeachment* 7

(Comm. Print 1974) (arguing that ''particular allegations of misconduct'' in English cases suggest several general types of damage to the state, including ''abuse of official power'').

185. H.R. Comm. on the Judiciary, *Impeachment of Richard M. Nixon, President of the United States*, H.R. Rep. No. 93–1305, 93d Cong. 371 (1974) (Minority Views of Messrs. Hutchinson, Smith, Sandman et al.).

186. *See H.R. Comm. on the Judiciary, Impeachment of William Jefferson Clinton, President of the United States*, H.R. Res. 611, 105th Cong. (1998); *see also* H.R. Rep. No. 105–830, 105th Cong. 143 (1998) (additional views of Rep. Bill McCollum) (''President Clinton actively sought to thwart the due administration of justice by repeatedly committing the felony crimes of perjury, witness tampering, and obstruction of justice.'').

187. H.R. Rep. No. 93–1305, at 1–3; *see also id.* at 10 (alleging that Nixon ''violated the constitutional rights of citizens'' and ''contravened the laws governing agencies of the executive branch'').

188. *See supra* notes 123–126 and accompanying text.

189. *See* III Hinds' Precedents §2407, at 843.

190. H.R. Rep. Com. No. 7, 40th Cong. 60 (1867) (Minority Views) (emphasis added); *see also* Michael Les Benedict, *The Impeachment and Trial of Andrew Johnson* 102 (1973).

191. Cong. Globe, 40th Cong., 2d Sess., 1616–18, 1638–42 (1868); *see also* Charles L. Black & Philip Bobbitt, *Impeachment: A Handbook, New Edition* 114 (2018); HJC Report at 48 (''Rather than directly target President Johnson's faithless execution of the laws, and his illegitimate motives in wielding power, the House resorted to charges based on the Tenure of Office Act.'').

192. HJC Report at 33 (emphasis in original).

193. *United States v. Marengo Cty. Comm'n*, 731 F.2d 1546, 1558 (11th Cir. 1984).

194. *See* Berger, *supra* note 174, at 294–95.

195. *Id.* at 295.

196. *Obama Administration's Abuse of Power: Hearing Before the H.R. Comm. on the Judiciary*, 112th Cong. 20 (2012) (written statement of Professor Michael J. Gerhardt).

197. 2 *Records of the Federal Convention*, *supra* note 175, at 550.

198. U.S. Const. art. II, §4.

199. Berger, *supra* note 174, at 118 (internal quotation marks omitted).

200. U.S. Const. art. II, §4.

201. U.S. Const. art. I, §3, cl. 6; art. II, §4.

202. U.S. Const. art. I, §3, cl. 7 (emphasis added).

203. U.S. Const. art. I, §3, cl. 6 (emphasis added).

204. *Id.*

205. U.S. Const. art. III, §2, cl. 3 (''The Trial of all Crimes, except in Cases of Impeachment, shall be by Jury. . . . ''); U.S. Const. art. II, §2, cl. 1 (''[H]e shall have Power to grant Reprieves and Pardons for Offenses against the United States, except in Cases of Impeachment.'').

206. The offense of bribery, of course, involves an *element* of intent, and thus requires some evaluation of the accused's motivations and state of mind. *See* 4 Blackstone, *Commentaries* *139 (''BRIBERY . . . is when a judge, or other person concerned in the administration of justice, takes any undue reward to influence his behavior in his office.''). There is a wide gulf, however, between proving a specific offense such as bribery that involves wrongful conduct along with the requisite intent and House Democrats' radical theory that *any* lawful action may be treated as an impeachable offense based on a characterization of subjective intent alone.

207. H.R. Rep. No. 93–1305, at 371 (Minority Views of Messrs. Hutchinson, Smith, Sandman et al.).

208. Trial Mem. of U.S. House of Representatives at 9; HJC Report at 31, 46, 70, 78.

209. 4 Elliot, Debates in the Several State Conventions on the Adoption of the Federal Constitution 126 (2d ed. 1888).

210. *Id.* at 127.

211. *Id.*

212. *Id.*

213. *See* HJC Report at 45–48.

214. H.R. Rep. No. 93–1305, at 1 2. ''This report . . . contains clear and convincing evidence that the President caused action—not only by his own subordinates but by agencies of the United States . . .—to cover up the Watergate break-in. This concealment required perjury, destruction of evidence, obstruction of justice—all of which are crimes.'' *Id.* at 33–34.

215. *Id.* at 3. While the House Judiciary Committee's report described Article II generally as involving ''abuse of the powers of the office of President,'' *id.* at 139, it is significant that the actual *charge* the Judiciary Committee specified in the recommended article of impeachment was not framed in terms of that amorphous concept. To the contrary, the article of impeachment itself charged unlawful actions and dropped the vague terminology of ''abuse of power.''

216. The third recommended article charged President Nixon with defying congressional subpoenas ''without lawful cause or excuse'' and asserted that the President had violated the assignment of the ''sole power of impeachment'' to the House by resisting subpoenas. *Id.* at 4. It also provides no precedent for House Democrats' abuse-of-power theory.

217. *See, e.g., Debate on Articles of Impeachment: Hearings Before the H.R. Comm. on the Judiciary*, 93d Cong. 412 (1974) (statement of Rep. Don Edwards) (''[A]rticle II charges President Nixon with intentional violations of the Constitution, chiefly amendments one, four, five, and six.'').

218. HJC Report at 45.

219. *Id.* at 47–48.

220. *Id.* at 48 n.244.

221. Cong. Globe, 40th Cong., 2d Sess., 1616–18, 1638–42 (1868).

222. Even the source they cite undermines House Democrats' theories. Tribe and Matz explain that one of the most important lessons from Johnson's impeachment is ''it really does matter which acts are identified in articles of impeachment'' and that impeachment proceedings are ''technical and legalistic.'' Laurence Tribe & Joshua Matz, *To End a Presidency: The Power of Impeachment* 54 (2018).

223. Benedict, *supra* note 190, at 102. Even if President Johnson's impeachment did support House Democrats' novel theory—which it does not—it does not provide a model to be emulated. As House Democrats' hand-picked expert, Professor Michael Gerhardt, has explained, the Johnson impeachment is a ''dubious precedent'' because it is ''widely regarded as perhaps the most intensely partisan impeachment rendered by the House''—at least until now. Michael J. Gerhardt, *The Federal Impeachment Process* 179 (3d ed. 2019); see also Berger, *supra* note 174, at 295 (''The impeachment and trial of Andrew Johnson, to my mind, represent a gross abuse of the impeachment process. . . .''); Jonathan Turley, *Democrats Repeat Failed History with Mad Dash to Impeach Donald Trump*, The Hill (Dec. 17, 2019), https://perma.cc/4Y3X-FCBW (''The Johnson case has long been widely regarded as the very prototype of an abusive impeachment. . . . Some critics have actually cited Johnson as precedent to show that impeachment can be done on purely political grounds. In other words, the very reason the Johnson impeachment is condemned by history is now being used today as a justification to dispense with standards and definitions of impeachable acts.'').

224. HJC Report at 44.

225. *Id.* at 99.

226. *Id.*

227. *Id.* at 103.

228. *U.S. Const. art. II, §1.*

229 United States v. Curtiss-Wright Exp. Corp., 299 U.S. 304, 319 (1936) (citation omitted).

230. *Id.*

231. *See Zivotofsky ex rel. Zivotofsky v. Kerry*, 135 S. Ct. 2076, 2086 (2015).

232. U.S. Const. art. II, §1; cf. Joseph Story, *Commentaries on the Constitution* §1450 (1833) (''One motive, which induced a change of the choice of the president from the national legislature, unquestionably was, to have the sense of the people operate in the choice of the person, to whom so important a trust was confided.''); *Hamdi v. Rumsfeld*, 542 U.S. 507, 531 (2004) (plurality opinion) (emphasizing that ''our Constitution recognizes that core strategic matters of warmaking belong in the hands of those who are best positioned and most politically accountable for making them'').

233. HJC Report at 48–53, 79–81.

234. *Id.* at 131; *see also id.* at 31 (pretending that House Democrats' have presented ''the strongest possible case for impeachment and removal from office'').

235. Trial Mem. of U.S. House of Representatives at 10–11 (quoting George Washington Farewell Address (1796), https://perma.cc/6FSA–8HBN (Washington Farewell Address)); HJC Report at 31 (quoting Washington Farewell Address).

236. Washington Farewell Address, *supra* note 235.

237. William R. Casto, *Foreign Affairs and the Constitution in the Age of the Fighting Sail*, 19–34, 59–82 (2006).

238. Washington Farewell Address, *supra* note 235.

239. If anything, the concerns of the Founding generation would suggest here that the U.S. should not be giving aid to Ukraine to halt Russian aggression because *that* is a foreign entanglement. The foreign policy needs of the Nation have obviously changed.

240. *See* HJC Report at 49–50.

241. 2 *Records of the Federal Convention*, supra note 175, at 68.

242. *Id.* at 69–70.

243. U.S. Const. art. I, §9, cl. 8; 2 *Records of the Federal Convention*, *supra* note 175, at 389.

244. Benjamin Franklin explained the Framers adopted a narrow definition of treason because ''prosecutions for treason were generally virulent; and perjury too easily made use of against innocence.'' 2 *Records of the Federal Convention*, *supra* note 175, at 348. Article III, Section 3 not only defines treason in specific terms but it establishes a high standard of proof, requiring the testimony of two witnesses or a confession.

245. HJC Report at 52, 80.

246. 2 *Records of the Federal Convention*, *supra* note 175, at 65 (George Mason) (''One objection agst. Electors was the danger of their being corrupted by the Candidates: & this furnished a peculiar reason in favor of impeachments whilst in office.''); *id.* at 69 (Gouverneur Morris) (''The Executive ought therefore to be impeachable for . . . Corrupting his electors.'').

247. U.S. Const. art. II, §4.

248. *United States v. Nixon*, 418 U.S. 683, 710–11 (1974) (explaining that ''courts have traditionally shown the utmost deference to Presidential responsibilities'' for foreign policy and national security and emphasizing that claims of privilege in this area would receive a higher degree of deference than invocations of ''a President's generalized interest in confidentiality''); *Assertion of Executive Privilege for Documents Concerning Conduct of Foreign Affairs with Respect to Haiti*, 20 Op. O.L.C. 6, 6 (1996) (citing *Nixon*, 418 U.S. at 705–

13); *see also Department of the Navy v. Egan*, 484 U.S. 518, 529 (1988) (''The Court also has recognized the generally accepted view that foreign policy was the province and responsibility of the Executive.'') (internal quotation marks and citation omitted).

249. *Nixon*, 418 U.S. at 708.

250. *See Prosecution for Contempt of Congress of an Executive Branch Official Who Has Asserted a Claim of Executive Privilege*, 8 Op. O.L.C. 101, 140 (1984) (''[T]he Constitution does not permit Congress to make it a crime for an official to assist the President in asserting a constitutional privilege that is an integral part of the President's responsibilities under the Constitution.'').

251. Press Release, Transcript of Pelosi Weekly Press Conference Today (Oct. 2, 2019), https://perma.cc/YPM4WCNX (Rep. Adam Schiff, Chairman of the House Intelligence Committee, stating that ''any action like that, that forces us to litigate or have to consider litigation, will be considered further evidence of obstruction of justice'').

252. *Impeachment Inquiry into President Donald J. Trump: Constitutional Grounds for Presidential Impeachment Before the H.R. Comm. on the Judiciary*, 116th Cong. (Dec. 4, 2019) (written statement of Professor Jonathan Turley, George Washington Univ. Law School, at 42, https://perma.cc/QU4H-FZC4) (emphasis added).

253. Memorandum from Steven A. Engel, Assistant Attorney General, Office of Legal Counsel, to Pat A. Cipollone, Counsel to the President, Re: *House Committees' Authority to Investigate for Impeachment*, at 1–3 (Jan. 19, 2020) (*Impeachment Inquiry Authorization*), *infra* Appendix C.

254. *See Watkins v. United States*, 354 U.S. 178, 206, 215 (1957) (holding that congressional subpoenas were invalid where they exceeded ''the mission[] delegated to'' a committee by the House); *United States v. Rumely*, 345 U.S. 41, 44 (1953) (holding that the congressional committee was without power to compel the production of certain information because the requests exceeded the scope of the authorizing resolution); *Tobin v. United States*, 306 F.2d 270, 276 (D.C. Cir. 1962) (reversing a contempt conviction on the basis that the subpoena requested documents outside the scope of the Subcommittee's authority to investigate).

255. *Watkins*, 354 U.S. at 200–10.

256. U.S. Const. art. I, §2, cl. 5.

257. *Rumely*, 345 U.S. at 42–44; *see also Trump* v. Mazars USA, LLP, 940 F.3d 710, 722 (D.C. Cir. 2019); *Exxon Corp. v. FTC*, 589 F.2d 582, 592 (D.C. Cir. 1978); Tobin, 306 F.2d at 275.

258. *E.g.*, *Watkins*, 354 U.S. at 207 (''[C]ommittees are restricted to the missions delegated to them . . . .''); *Tobin*, 306 F.2d at 276; Alissa M. Dolan et al., Cong. Research Serv., RL30240, *Congressional Oversight Manual* 24 (2014).

259. *McGrain* v. *Daugherty*, 273 U.S. 135, 177 (1927).

260. *Senate Select Comm. on Presidential Campaign Activities* v. *Nixon*, 498 F.2d 725, 732 (D.C. Cir. 1974).

261. Nothing in the recent decision in *In re Application of Committee on the Judiciary* establishes that a committee can pursue an investigation pursuant to the impeachment power without authorization by a vote from the House. See___F. Supp. 3d___, 2019 WL 5485221, at *26–28 (D.D.C. Oct. 25, 2019). Any such discussion was dicta. The question before the court was whether a particular Judiciary Committee inquiry was being conducted ''preliminarily to'' an impeachment trial in the Senate, a question that the court viewed as depending on the inquiry's ''purpose'' and whether it could lead to such a trial—''not the source of authority Congress acts under.'' *Id.* at *28 n.37. In any event, the court's analysis was flawed.

First, the court, like the Committees, misread a House annotation to Jefferson's Manual. See, e.g., Letter from Elijah E. Cummings, Chairman, House Oversight Committee, et al., to John Michael Mulvaney, Acting White House Chief of Staff, at 2 (Oct. 4, 2019). The language quoted by the court states that ''various events have been credited with setting an impeachment in motion.'' H. Doc. 114–192, 114th Cong. §603 (2017). But that does not mean that any of these ''various events'' automatically confers authority on a committee to begin an impeachment inquiry. It merely acknowledges the historical fact that there is more than one way the House may *receive information* that may prompt the House to then authorize a committee to pursue an impeachment investigation.

Second, the court misread III Hinds' Precedents §2400 as showing that ''a resolution 'authoriz[ing]' HJC 'to inquire into the official conduct of Andrew Johnson' was passed *after* HJC 'was already considering the subject.' '' *Id.* at *27. That section discusses *two* House votes on *two* separate resolutions that occurred weeks apart. The House first voted to authorize the Johnson inquiry (which the court missed), and it then voted to refer a second matter (the resolution cited by the court), which touched upon President Johnson's impeachment, ''to the Committee on the Judiciary, which was already considering the subject.'' III Hinds' Precedents §2400. The court also misread the Nixon precedent as involving an ''investigation well before the House passed a resolution authorizing an impeachment inquiry.'' *In re Application of the Comm. on the Judiciary*, 2019 WL 5485221, at *27. But that pre-resolution work did not involve any exercise of the House's impeachment power and was instead limited to preliminary, self-organizing work conducting ''research into the constitutional issue of defining the grounds for impeachment'' and ''collecting and sifting the evidence available in the public domain.'' Staff of H.R. Comm. on the Judiciary, *Constitutional Grounds for Presidential Impeachment*, 93d Cong. 1–3 (Comm. Print 1974). The Chairman of the Committee himself acknowledged that, to actually launch an inquiry, a House resolution ''is a necessary step.'' 120 Cong. Rec. 2351 (Feb. 6, 1974 statement of Rep. Rodino).

Third, the court misread House Resolution 430, which was adopted on June 11, 2019. The court plucked out language from the resolution granting the Judiciary Committee ''any and all necessary authority under Article I of the Constitution,'' as if to suggest that the Judiciary Committee could, under that grant, initiate an impeachment inquiry. *In re Application of Comm. on Judiciary*, 2019 WL 5485221, at *29 (quoting H.R. Res. 430, 116th Cong. (2019)). But House Resolution 430 is actually much more narrow. After providing certain authorizations for filing lawsuits, the resolution simply gave committees authority to pursue litigation effectively by providing that, ''*in connection with any judicial proceeding brought under the first or second resolving clauses*, the chair of any standing or permanent select committee exercising authority thereunder has any and all necessary authority under Article I of the Constitution.'' H.R Res. 430 (emphasis added). Simply by providing authority to pursue lawsuits, House Resolution 430 did not authorize any committee to initiate an impeachment investigation.

262. Clerk, House of Representatives, *Rules of the House of Representatives*, 116th Cong. (2019) (H.R. Rule).

263. H.R. Rule X.1(l)(18).

264. H.R. Rule X.1(n)(5).

265. H.R. Rule XI.1(b)(1) (limiting the power to conduct ''investigations and studies'' to those ''necessary or appropriate in the exercise of its responsibilities under rule X''); H.R. Rule XI.2(m)(1) (limiting the power to hold hearings and issue subpoenas to ''the purpose of carrying out any of [the committee's] functions and duties under this rule and rule X (including any matters referred to it under clause 2 of rule XII)'').

266. The mere referral of an impeachment resolution by itself could not authorize a committee to begin an impeachment inquiry. The ''Speaker's referral authority under Rule XII is . . . limited to matters within a committee's Rule X legislative jurisdiction'' and ''may not expand the jurisdiction of a committee by referring a bill or resolution falling outside the committee's Rule X legislative authority.'' *Impeachment Inquiry Authorization*, *infra* Appendix C, at 30; *see* H.R. Rule XII.2(a); 18 Deschler's Precedents of the House of Representatives, app. at 578 (1994) (Deschler's Precedents). If a mere referral could authorize an impeachment inquiry, then a single House member could trigger the delegation of the House's ''sole Power of Impeachment'' to a committee and thus, for the House's most serious investigations, end-run Rule XI.1(b)(1)'s limitation of committee investigations to the committees' jurisdiction under Rule X.

267. H.R. Res. 988, 93d Cong. 1, 13 (1974), *reprinted* in H.R. Select Comm. on Comms., *Committee Reform Amendments of 1974*, H.R. Rep. No. 93–916, 93d Cong. 367, 379 (1974); *see also* 120 Cong. Rec. 32,962 (1974).

That language was stripped from the resolution by an amendment, *see* 120 Cong. Rec. 32,968–72 (1974), the amended resolution was adopted, *id.* at 34,469–70, and impeachment has remained outside the scope of any standing committee's jurisdiction ever since. *Cf. Barenblatt v. United States*, 360 U.S. 109, 117–18 (1959) (disapproving of ''read[ing] [a House rule] in isolation from its long history'' and ignoring the ''persuasive gloss of legislative history'').

268. H.R. Res. 988, 93d Cong. (Oct. 8, 1974); Staff of the Select Comm. on Comms., *Committee Reform Amendments of 1974*, 93d Cong. 117 (Comm. Print 1974).

269. Certain committees, not relevant here, had authority to issue subpoenas. Rules of the House of Representatives of the United States, H.R. Doc. No. 114–192, at 584 (2017).

270. Congressional Quarterly, *Impeachment and the U.S. Congress* 20 (Robert A. Diamond ed., 1974).

271. 3 Deschler's Precedents ch. 14, §15.2, at 2171 (statements of Rep. Peter Rodino and Rep. Hutchinson); *id.* at 2172 (Parliamentarian's Note); *see also* Dep't of Justice, Office of Legal Counsel, *Legal Aspects of Impeachment: An Overview*, at 42 n.21 (1974), https://perma.cc/X4HU-WVWS.

272. H.R. Res. 581, 105th Cong. (1998) (Clinton); H.R. Res. 803, 93d Cong. (1974) (Nixon); Cong. Globe, 40th Cong., 2d Sess. 784–85, 1087 (1868) (Johnson); Cong. Globe, 39th Cong., 2d Sess. 320–21 (1867) (Johnson); *see also* III Hinds' Precedents of the House of Representatives 2408, at 845 (1907) (Hinds' Precedents) (Johnson); *id.* §2400, at 823–24 (Johnson).

273. H.R. Comm. on the Judiciary, *Investigatory Powers of the Comm. on the Judiciary with Respect to its Impeachment Inquiry*, H.R. Rep. No. 105–795, 105th Cong. 24 (1998).

274. 3 Deschler's Precedents ch. 14, §15.2, at 2171 (statement of Rep. Rodino) (emphasis added); *see also*, *e.g.*, 120 Cong. Rec. 2356 (1974) (statement of Rep. Jordan).

275. Richard L. Lyons, *GOP Picks Jenner as Counsel*, Wash. Post (Jan. 8, 1974), at A1, A6.

276. In 1796, the Attorney General advised the House that, to proceed with impeachment of a territorial judge, ''a committee of the House of Representatives'' must ''be appointed for [the] purpose'' of examining evidence. III Hinds' Precedents § 2486, at 982.

The House accepted and ratified this advice in its first impeachment the next year and in each of the next twelve impeachments of judges and subordinate executive officers. III Hinds' Precedents §§ 2297, 2300, 2321, 2323, 2342, 2364, 2385, 2444–2445, 2447–2448, 2469, 2504; VI Cannon's Precedents of the House of Representatives §§498, 513, 544 (1936) (Cannon's Precedents); 3 Deschler's Precedents ch. 14, §18.1. In some cases before 1870, such as the impeachment of Judge Pickering, the House relied on information presented directly to the House to impeach an official before conducting an inquiry, and then authorized a committee to draft specific articles of impeachment and exercise investigatory powers. III Hinds' Precedents §2321. Those few cases adhere to the rule that a vote of the full House is necessary to authorize any committee to investigate for impeachment purposes.

277. H.R. Comm. on the Judiciary, *Impeachment of Walter L. Nixon, Jr.*, H.R. Rep. No. 101–36, 101st Cong. 12–13 (1989) (Judge Nixon Jr.); H.R. Comm. on the Judiciary, *Impeachment of Judge Alcee L. Hastings*, H.R. Rep. No. 100–810, 100th Cong. 7–8, 29–31, 38–39 (1988) (Judge Hastings); H.R. Comm. on the Judiciary, *Impeachment of Judge Harry E. Claiborne*, H.R. Rep. No. 99–688, 99th Cong. 18–20 (1986) (Judge Claiborne). These aberrations are still distinguishable because the House adopted resolutions authorizing subpoenas for depositions during the impeachment investigations of Judges Nixon and Hastings, *see* H.R. Res. 562, 100th Cong. (1988); H.R. Res. 320, 100th Cong. (1987), and the Judiciary Committee apparently did not issue any subpoenas in Judge Claiborne's impeachment inquiry.

278. *NLRB* v. *Noel Canning*, 573 U.S. 513, 538 (2014); *see also Impeachment Inquiry Authorization*, *infra* Appendix C, at 27.

279. *See supra* Standards Part B.3.

280. H.R. Rep. No. 105–830, at 265 (Minority Views).

281. *See Impeachment Inquiry Authorization*, *infra* Appendix C, at 1–3. Although the committees also referred to their oversight and legislative jurisdiction in issuing these subpoenas, the committees cannot ''leverage their oversight jurisdiction to require the production of documents and testimony that the committees avowedly intended to use for an unauthorized impeachment inquiry.'' *Id.* at 32–33. These ''assertion[s] of dual authorities'' were merely ''token invocations of 'oversight and legislative jurisdiction,'" without ''any apparent legislative purpose.'' *Id.* The committees transmitted the subpoenas ''[p]ursuant to the House['s] impeachment inquiry,'' admitted that documents would ''be collected as part of the House's impeachment inquiry,'' and confirmed that they would be ''shared among the Committees, as well as with the Committee on the Judiciary as appropriate''—all to be used in the impeachment inquiry. *E.g.*, Letter from Elijah E. Cummings, Chairman, H.R. Comm. on Oversight & Reform, et al., to John M. Mulvaney, Acting White House Chief of Staff, at 1 (Oct. 4, 2019).

282. Press Release, Democratic Staff of the H.R. Comm. on the Judiciary, Fact Sheet: GOP Attacks on IRS Commissioner are Not Impeachment Proceedings (Sept. 21, 2016) (emphasis in original), https://perma.cc/6W8E-7KV8.

283. *Impeachment Articles Referred on John Koskinen (Part III): Hearing Before the H.R. Comm. on the Judiciary*, 114th Cong. 30 (2016) (*Koskinen Impeachment Hearing: Part III*) (statement of Rep. Johnson) (emphasis added).

284. *Id.* at 16 (statement of Rep. Nadler); Jerry Nadler (@RepJerryNadler), Twitter (Sept. 21, 2016, 7:01 AM), https://perma.cc/A4VY-TFGM.

285. *Koskinen Impeachment Hearing: Part III*, *supra* note 283, at 54 (statement of Rep. Jeffries).

286. H.R. Res. 660, 116th Cong. (2019).

287. *See infra* Appendix B.

288. *Impeachment Inquiry Authorization*, *infra* Appendix C, at 37.

289. H.R. Res. 507, 116th Cong. (2019) (expressly ''ratif[ying] and affirm[ing] all current and future investigations, as well as *all subpoenas* previously issued or to be issued in the future'') (emphasis added).

290. HJC Report at 134, 137, 157.

291. *See supra* Part I.B.1(a); *infra* Part II; Letter from Pat A. Cipollone, Counsel to the President, to Nancy Pelosi, Speaker, House of Representatives, et al., at 7 (Oct. 8, 2019).

292. Oct. 8, 2019 Letter from Pat. A Cipollone, *supra* note 291, at 8.

293. *See* Letter from Pat A. Cipollone, Counsel to the President, to William Pittard, Counsel for Mick Mulvaney (Nov. 8, 2019); Letter from Pat A. Cipollone, Counsel to the President, to Bill Burck, Counsel for John Eisenberg (Nov. 3, 2019); Letter from Pat A. Cipollone, Counsel to the President, to Charles J. Cooper, Counsel for Charles Kupperman (Oct. 25, 2019).

294. *See generally* Memorandum for John D. Ehrlichman, Assistant to the President for Domestic Affairs, from William H. Rehnquist, Assistant Attorney General, Office of Legal Counsel, *Re: Power of Congressional Committee to Compel Appearance or Testimony of ''White House Staff,''* at 8 (Feb. 5, 1971) (Rehnquist Memorandum) (''The President and his immediate advisers—that is, those who customarily meet with the President on a regular or frequent basis—should be deemed absolutely immune from testimonial compulsion by a congressional committee.'').

295. Letter from Steven A. Engel, Assistant Attorney General, to Pat A. Cipollone, Counsel to the President (Nov. 7, 2019) (regarding Acting White House Chief of Staff Mulvaney); Letter from Steven A. Engel, Assistant Attorney General, to Pat A. Cipollone, Counsel to the President (Nov. 3, 2019) (regarding Legal Advisor to the National Security Council Eisenberg); Letter from Steven A. Engel, Assistant Attorney General, to Pat A. Cipollone, Counsel to the President (October 25, 2019) (regarding Deputy National Security Advisor Kupperman). These letters are attached, *infra*, at Appendix D.

296. *Testimonial Immunity Before Congress of the Former Counsel to the President*, 43 Op. O.L.C. ___, *1 (May 20, 2019) *(2019 OLC Immunity Opinion)*; *see also Immunity of the Assistant to the President and Director of the Office of Political Strategy and Outreach from Congressional Subpoena*, 38 Op. O.L.C. ___(July 15, 2014) *(2014 OLC Immunity Opinion); Immunity of the Former Counsel to the President from Compelled Congressional Testimony*, 31 Op. O.L.C. 191, 192 (2007); *Immunity of the Counsel to the President from Compelled Congressional Testimony*, 20 Op. O.L.C. 308, 308 (1996); Memorandum for Fred F. Fielding, Counsel to the President, from Theodore B. Olson, Assistant Attorney General, Office of Legal Counsel, *Re: Congressional Testimony by Presidential Assistants* at 1 (Apr. 14, 1981); Memorandum for All Heads of Offices, Divisions, Bureaus and Boards of the Department of Justice, from John M. Harmon, Acting Assistant Attorney General, Office of Legal Counsel, *Re: Executive Privilege*, at 5 (May 23, 1977); Rehnquist Memorandum, *supra* note 294.

297. *See 2014 OLC Immunity Opinion*, 38 Op. O.L.C. at *3.

298. *See Assertion of Executive Privilege with Respect to Clemency Decision*, 23 Op. O.L.C. 1, 5 (1999) (emphasis added).

299. *Id.* at 5–6 (emphasis added); *see also Immunity of the Counsel to the President from Compelled Congressional Testimony*, 20 Op. O.L.C. at 308 (''It is the longstanding position of the executive branch that the President and his immediate advisors are absolutely immune from testimonial compulsion by a Congressional committee.'' (quotations and citations omitted)).

300. *2014 OLC Immunity Opinion*, 38 Op. O.L.C. at *3 (quotations and citation omitted); *see also Assertion of Executive Privilege with Respect to Clemency Decision*, 23 Op. O.L.C. at 5 (''[A] senior advisor to the President functions as the President's alter ego . . . .'').

301. *2019 OLC Immunity Opinion*, 43 Op. O.L.C. at *5 (citations omitted).

302. *Id.* at *4 (''Like executive privilege, the immunity protects confidentiality within the Executive Branch and the candid advice that the Supreme Court has acknowledged is essential to presidential decision-making.'' (citing *Nixon*, 418 U.S. at 705)).

303. *Nixon*, 418 U.S. at 708.

304. Subpoena from the House Committee on Oversight and Reform to John Michael Mulvaney, Acting White House Chief of Staff (Oct. 4, 2019) (requesting documents concerning a May 23 Oval Office meeting, among other presidential communications).

305. H.R. Permanent Select Comm. on Intelligence, *The Trump-Ukraine Impeachment Inquiry Report*, H.R. Rep. No. 116–335, 116th Cong. 181–82 (2019) (HPSCI Report).

306. *Nixon*, 418 U.S. at 705.

307. *See, e.g.*, *2014 OLC Immunity Opinion*, 38 Op. O.L.C. at *6 (''[S]ubjecting an immediate presidential adviser to Congress's subpoena power would threaten the President's autonomy and his ability to receive sound and candid advice.'').

308. *See* Compl. at 11, *Kupperman* v. *U.S. House of Representatives*, No. 19–cv–3224 (D.D.C. Oct. 25, 2019), ECF No. 1.

309. Letter from Steven A. Engel, Assistant Attorney General, to Pat A. Cipollone, Counsel to the President, at 3 (Nov. 3, 2019) (regarding Legal Advisor to the National Security Council Eisenberg); Letter from Steven A. Engel, Assistant Attorney General, to Pat A. Cipollone, Counsel to the President, at 2 (Oct. 25, 2019) (regarding Deputy National Security Advisor Kupperman). These letters are attached, infra, at Appendix D.

310. *See Chicago & S. Air Lines* v. *Waterman S.S. Corp.*, 333 U.S. 103, 109 (1948).

311. 418 U.S. at 710–11; *see also Harlow* v. *Fitzgerald*, 457 U.S. 800, 812 (1982) (''For aides entrusted with discretionary authority in such sensitive areas as national security or foreign policy, absolute immunity might well be justified to protect the unhesitating performance of functions vital to the national interest.''); *Committee on Judiciary* v. *Miers*, 558 F. Supp. 2d 53, 101 (D.D.C. 2008) (noting that ''[s]ensitive matters of 'discretionary authority' such as 'national security or foreign policy' may warrant absolute immunity in certain circumstances.'').

312. Subpoena from the House Committee on Oversight and Reform to John Michael Mulvaney, Acting White House Chief of Staff (Oct. 4, 2019).

313. *In re Sealed Case*, 121 F.3d 729, 737 (D.C. Cir. 1997) (internal quotation marks and citations omitted).

314. *Id.*

315. *See Assertion of Executive Privilege Over Documents Generated in Response to Congressional Investigation into Operation Fast and Furious*, 36 Op. O.L.C. ___, at *3 (June 19, 2012) (''The threat of compelled disclosure of confidential Executive Branch deliberative material can discourage robust and candid deliberations.''); *Assertion of Executive Privilege Over Communications Regarding EPA's Ozone Air Quality Standards and California's Greenhouse Gas Waiver Request*, 32 Op. O.L.C. ___, *2 (June 19, 2008) (''Documents generated for the purpose of assisting the President in making a decision are protected'' and these protections also ''encompass[] Executive Branch deliberative communications

that do not implicate presidential decision-making'').

316. *See, e.g.*, Letter from Eliot L. Engel, Chairman, H.R. Comm. on Foreign Relations, et al., to John Michael Mulvaney, Acting White House Chief of Staff, at 4 (Nov. 5, 2019) (explaining that House rules ''do not permit agency counsel to participate in depositions'').

317. *Exclusion of Agency Counsel from Congressional Depositions in the Impeachment Context*, 43 Op. O.L.C. ____, *4 (Nov. 1, 2019).

318. *Id.* at *2; *see generally Attempted Exclusion of Agency Counsel from Congressional Depositions of Agency Employees*, 43 Op. O.L.C. ____(May 23, 2019) (same, in the oversight context).

319. *Exclusion of Agency Counsel from Congressional Depositions in the Impeachment Context*, 43 Op. O.L.C. at *2.

320. *Attempted Exclusion of Agency Counsel from Congressional Depositions of Agency Employees*, 43 Op. O.L.C. at *10 (''[I]n many cases, agency employees will have only limited experience with executive privilege and may not have the necessary legal expertise to determine whether a question implicates a protected privilege.'').

321. *See INS* v. *Chadha*, 462 U.S. 919, 955 n.21 (1983) (Congress's power to ''determin[e] specified internal matters'' is limited because the Constitution ''only empowers Congress to bind itself''); *United States* v. *Ballin*, 144 U.S. 1, 5 (1892) (Congress ''may not by its rules ignore constitutional restraints''); HJC Report at 198 (Dissenting Views) (''The Constitution's grant of the impeachment power to the House of Representatives does not temporarily suspend the rights and powers of the other branches established by the Constitution.'').

322. *Authority of the Department of Health and Human Services to Pay for Authority of the Department of Health and Human Services to Pay for Private Counsel to Represent an Employee Before Congressional Committees*, 41 Op. O.L.C. ____, *5 n.6 (Jan. 18, 2017).

323. Letter from Rep. Elijah E. Cummings, Chairman, H.R. Comm. on Oversight & Reform, to Carl Kline, at 2 (Apr. 27, 2019) (''Both your personal counsel and attorneys from the White House Counsel's office will be permitted to attend.''); *see also* Kyle Cheney, *Cummings Drops Contempt Threat Against Former W.H. Security Chief*, Politico (Apr. 27, 2019), https://perma.cc/F273-EJZW.

324. *Bordenkircher* v. *Hayes*, 434 U.S. 357, 363 (1978) (citations omitted); *see also, e.g.*, *United States* v. *Goodwin*, 357 U.S. 368, 372 (1982) (''For while an individual certainly may be penalized for violating the law, he just as certainly may not be punished for exercising a protected statutory or constitutional right.'').

325. Harvey Berkman, *Top Profs: Not Enough to Impeach*, The National Law J. (Oct. 5, 1998) (quoting Professor Tribe), *reprinted* in 144 Cong. Rec. H10031 (1998).

326. *Impeachment Inquiry: William Jefferson Clinton, President of the United States, Consideration of Articles of Impeachment*, 105th Cong. 398 (1998) (statement of Rep. Jerrold Nadler).

327. *See, e.g.*, Letter from Rep. Elijah E. Cummings, Chairman, H.R. Comm. on Oversight & Reform, et al., to John Michael Mulvaney, Acting White House Chief of Staff, at 1 (Oct. 4, 2019).

328. Transcript of Pelosi Weekly Press Conference, *supra* note 251 (statement of Rep. Adam Schiff) (emphasis added).

329. *See History of Refusals by Executive Branch Officials to Provide Information Demanded by Congress, Part I—Presidential Invocations of Executive Privilege Vis-â-Vis Congress*, 6 Op. O.L.C. 751, 753 (1982) (explaining that in response to a request for documents relating to negotiation of the Jay Treaty with Great Britain, President Washington sent a letter to the House stating, ''[t]o admit, then, a right in the House of Representatives to demand, and to have, as a matter of course, all the papers respecting a negotiation with a foreign Power, would be to establish a dangerous precedent'' (citation omitted)); Jonathan L. Entin, *Separation of Powers, the Political Branches, and the Limits of Judicial Review*, 51 Ohio St. L.J. 175, 186–209 (1990).

330. Letter from James Madison to Mr. ____ (1834), in 4 Letters and other Writings of James Madison 349 (1884) (emphasis added).

331. *Myers* v. *United States*, 272 U.S. 52, 85 (1926) (''The purpose was not to avoid friction, but, by means of the inevitable friction incident to the distribution of the governmental powers among three departments, to save the people from autocracy.''); The Federalist No. 51, at 320–21 (James Madison) (Clinton Rossiter ed., 1961) (arguing that ''liberty'' requires that the government's ''constituent parts . . . be the means of keeping each other in their proper places'').

332. *United States* v. *Am. Tel. & Tel. Co.*, 567 F.2d 121, 127 (D.C. Cir. 1977) (when Congress asks for information from the Executive Branch, that request triggers the ''implicit constitutional mandate to seek optimal accommodation . . . of the needs of the conflicting branches.'').

333. *Id.* at 130.

334. *Congressional Requests for Confidential Executive Branch Information*, 13 Op. O.L.C. 153, 162 (1989) (''If after assertion of executive privilege the committee remains unsatisfied with the agency's response, it may vote to hold the agency head in contempt of Congress.'').

335. As the Minority Views on the House Judiciary Committee's Report in the Nixon proceedings pointed out, it is important to have a body other than the committee that issued a subpoena evaluate the subpoena before there is a move to contempt. ''[I]f the Committee were to act as the final arbiter of the legality of its own demand, the result would seldom be in doubt. . . . It is for the reason just stated that, when a witness before a Congressional Committee refuses to give testimony or produce documents, the Committee cannot itself hold the witness in contempt. . . . Rather, the established procedure is for the witness to be given an opportunity to appear before the full House or Senate, as the case may be, and give reasons, if he can, why he should not be held in contempt.'' H.R. Rep. No. 93–1305, at 484 (1974) (Minority Views); *see also id.* at 516 (additional views of Rep. William Cohen).

336. As examples of such lawsuits, *see* Compl., *Comm. on Oversight and Gov't Reform* v. *Holder*, No. 1:12–cv–1332 (D.D.C. August 13, 2012), ECF No. 1 (suing to enforce subpoenas in the Fast and Furious investigation during the Obama Administration); Compl., *Comm. on the Judiciary* v. *McGahn*, No. 19–cv–2379 (D.D.C. Aug. 7, 2019), ECF No. 1. Additionally, for Senate subpoenas, Congress has affirmatively passed legislation creating subject matter jurisdiction in federal court to hear such cases. *See* 28 U.S.C. §1365 (2018). The Trump Administration, like the Obama Administration, has taken the position that a suit by a congressional committee attempting to enforce a subpoena against an Executive Branch official is not a justiciable controversy in an Article III court. *See Comm. on Oversight & Gov't Reform* v. *Holder*, 979 F. Supp. 2d 1, 9–10 (D.D.C. 2013) (''The defendant . . . maintains that Article III of the Constitution actually prohibits the Court from exercising jurisdiction over what he characterizes as 'an inherently political dispute.' ''). The House of Representatives, however, has taken the opposite view. See Pl.'s Opp'n to Def.'s Mot. to Dismiss, *Comm. on Oversight & Gov't Reform* v. *Holder*, No. 12–cv–1332 (D.D.C. Nov. 21, 2012), ECF No. 17. Unless and until the justiciability question is resolved by the Supreme Court, the House cannot simultaneously (i) insist that the courts may decide whether any particular refusal to comply with a congressional committee's demand for information was legally proper *and* (ii) claim that the House can treat resistance to any demand for information from Congress as a ''high crime and misdemeanor'' justifying impeachment *without* securing any judicial determination that the Executive Branch's action was improper.

337. *See Am. Tel. & Tel. Co.*, 567 F.2d at 127 (''[E]ach branch should take cognizance of an implicit constitutional mandate to seek optimal accommodation through a realistic evaluation of the needs of the conflicting branches in the particular fact situation.'').

338. *See Transcript: Nancy Pelosi's Public and Private Remarks on Trump Impeachment*, NBC News (Sept. 24, 2019), https://www.nbcnews.com/politics/trump-impeachment-inquiry/transcript-nancy-pelosi-s-speech-trump-impeachment-n1058351 (''[R]ight now, we have to strike while the iron is hot. . . . And, we want this to be done expeditiously. Expeditiously.''); Ben Kamisar, *Schiff Says House Will Move Forward with Impeachment Inquiry After 'Overwhelming' Evidence from Hearings*, NBC News (Nov. 24, 2019), https://www.nbcnews.com/politics/meet-the-press/schiff-says-house-will-move-forward-impeachment-inquiry-after-overwhelming-n1090221 (''[T]here are still other witnesses, other documents that we'd like to obtain. But we are not willing to go the months and months and months of rope-a-dope in the courts, which the administration would love to do.'').

339. The Federalist No. 49, at 314 (James Madison) (Clinton Rossiter ed., 1961).

340. *Am. Tel. & Tel. Co.*, 567 F.2d at 127.

341. HJC Report at 154.

342. *See, e.g., Senate Select Comm. on Presidential Campaign Activities* v. *Nixon*, 498 F.2d 725, 733 (D.C. Cir. 1974) (holding that a congressional committee's need for subpoenaed material ''is too attenuated and too tangential to its functions to permit a judicial judgment that the President is required to comply with the Committee's subpoena''); *Gojack* v. *United States*, 384 U.S. 702, 716 (1966) (reversing Petitioner's contempt of Congress conviction because ''the subcommittee was without authority which can be vindicated by criminal sanctions''); *United States* v. *Rumely*, 345 U.S. 41, 47–48 (1953) (holding that a congressional committee subpoena sought materials outside the scope of the authorizing resolution); *United States* v. *McSurely*, 473 F.2d 1178, 1194 (D.C. Cir. 1972) (reversing a congressional contempt conviction and applying Fourth Amendment protections to a congressional investigation).

343. Turley Written Statement, *supra* note 252, at 39.

344. *Background and History of Impeachment: Hearing Before the Subcomm. on the Const. of the H.R. Comm. on Judiciary*, 105th Cong. 236 (1998) (*Clinton Judiciary Comm. Hearing on Background of Impeachment*) (written statement of Professor Susan Low Bloch, Georgetown University Law Center); *see also* Alan Dershowitz, *Supreme Court Ruling Pulls Rug out from under Article of Impeachment*, The Hill (Dec. 16, 2019), https://perma.cc/H5BA-TKVX (stating that ''the House Judiciary Committee has arrogated to itself the power to decide the validity of subpoenas, and the power to determine whether claims of executive privilege must be recognized'' and arguing that those authorities ''properly belong with the judicial branch of our government, not the legislative branch'').

345. H.R. Rep. No. 105–830, at 85.

346. *Id.* at 84 (quoting Rep. Bob Goodlatte).

347. *Id.*

348. *Clinton Judiciary Comm. Hearing on Background of Impeachment, supra* note 344, at 54 (written statement of Professor Michael J. Gerhardt, The College of William and Mary School of Law).

349. *See Assertion of Executive Privilege Over Documents Generated in Response to Congressional Investigation into Operation 'Fast and Furious*, 36 Op. O.L.C. at *1, *8.

350. *See, e.g.*, Harper Neidig, *Judge Rules Against Obama on 'Fast and Furious'*, The Hill (Jan. 19, 2016), https://perma.cc/FSA2–YQFT (''A federal judge on Tuesday ruled President Obama cannot use executive privilege to keep records on the 'Fast and Furious' gun-tracking program from Congress . . . House Republicans launched the suit after voting to hold then-Attorney General Eric Holder in contempt for refusing to turn over the records.'').

351. Turley Written Statement, supra note 252, at 42.

352. *See* Trial Mem. of the U.S. House of Representatives at 33–34; HJC Report at 136–37.

353. Oct. 8, 2019 Letter from Pat A. Cipollone, *supra* note 291, at 8.

354. *History of Refusals*, 6 O.L.C. Op. at 771 (''President Truman issued a directive providing for the confidentiality of all loyalty files and requiring that all requests for such files from sources outside the Executive Branch be referred to the Office of the President, for such response as the President may determine . . . At a press conference held on April 22, 1948, President Truman indicated that he would not comply with the request to turn the papers over to the Committee.'' (citations omitted)); *id.* at 769 (noting President Coolidge refused to provide the Senate ''a list of all companies in which the Secretary of the Treasury was interested' '' and instead sent a letter ''calling the Senate's investigation an 'unwarranted intrusion,' born of a desire other than to secure information for legitimate legislative purposes'' (quoting 65 Cong. Rec. 6087 (1924))); *id.* at 757 (noting President Jackson refused to provide to the Senate a paper purportedly read by the President to his Cabinet and instead asserted ''the Legislature had no constitutional authority to 'require of me an account of any communication, either verbally or in writing, made to the heads of Departments acting as a Cabinet council . . . [nor] might I be required to detail to the Senate the free and private conversations I have held with those officers on any subject relating to their duties and my own.' '').

355. As explained above, many of the subpoenas were *not* authorized as part of any impeachment inquiry because they were issued when the House had not voted to authorize any such inquiry. *See supra* Part I.B.1(a).

356. *Nixon*, 418 U.S. at 707.

357. *See, e.g.*, Trial Mem. of the U.S. House of Representatives at 33–34; HJC Report at 136–37.

358. House Democrats' reliance on *Kilbourn v. Thompson* is misplaced. *Kilbourn* merely states that, when conducting an impeachment inquiry, the House or Senate may ''compel the attendance of witnesses, and their answer to proper questions, in the same manner and by the use of the same means that courts of justice can in like cases.' '' Trial Mem. of the U.S. House of Representatives at 32 (quoting *Kilbourn*, 103 U.S. 168, 190 (1880)). But constitutionally based privileges apply in ''courts of justice,'' so *Kilbourn* does not foreclose the assertion of privileges and immunities in impeachment proceedings. Regardless, the statement quoted by House Democrats is dictum and, therefore, not binding. Additionally, House Democrats point to an 1846 statement by President Polk to support the proposition that ''[p]revious Presidents have acknowledged their obligation to comply with an impeachment investigation.'' *Id.* at 32–33. OLC has clarified that, when read in context, President Polk's statement actually ''acknowledg[es] the continued availability of executive privilege'' because President Polk explained that ''even in the impeachment context, the Executive branch would adopt all wise precautions to prevent the exposure of all such matters the publication of which might injuriously affect the public interest, except so far as this might be necessary to accomplish the great ends of public justice.' '' *Impeachment Inquiry Authorization, infra* Appendix C, at 11 n.13 (quoting Memorandum for Elliot Richardson, Attorney General, from Robert G. Dixon, Jr., Assistant Attorney General, Office of Legal Counsel, *Re: Presidential Immunity from Coercive Congressional Demands for Information* at 22–23 (July 24, 1973)).

359. The Federalist No. 51, *supra* note 331, at 322.

360. *Exclusion of Agency Counsel from Congressional Depositions in the Impeachment Context*, 43 Op. OLC at *2 (discussing how the ''same principles apply to a congressional committee's effort to compel the testimony of an executive branch official in an impeachment inquiry'' as in other contexts).

361. Black & Bobbitt, *supra* note 191, at 20; *see also* Turley Written Statement, note 252, at 40 (''Congress cannot substitute its judgment as to what a President can withhold.'').

362. HJC Report at 129–31.

363. Turley Written Statement, *supra* note 252, at 41.

364. HJC Report at 155 (emphasis in original).

365. Appellee Br. at 13, *In re: Application of the Comm. on the Judiciary*, No. 19–5288 (D.C. Cir. Dec. 16, 2019) (''If the House approves Articles of Impeachment, relevant grand-jury material that the Committee obtains in this litigation could be used during the subsequent Senate proceedings. And the Committee continues its impeachment investigation into Presidential misconduct . . . . Material that the Committee obtains in this litigation could be used in that investigation as well.'').

366. Pl.'s Reply in Support of its Mot. for Expedited Partial Summary Judgment at 3, *Comm. on the Judiciary* v. *McGahn*, No. 19–cv–2379 (D.D.C. Oct. 16, 2019), ECF No. 38 (''The President has stated that the Executive Branch will not articipate in' the House's ongoing impeachment inquiry, and has declared that McGahn is *absolutely* immune from Congressional process. The parties are currently at an impasse that can only be resolved by the courts.'' (emphasis in original)); *see also* Compl. §1, *Comm. on the Judiciary* v. *McGahn*, No. 19–cv–2379 (D.D.C. Aug. 7, 2019), ECF No. 1 (arguing that witness testimony is needed because ''[t]he Judiciary Committee is now determining whether to recommend articles of impeachment against the President'').

367. *See* HJC Report at 146–48.

368. *See, e.g., Clinton* v. *Jones*, 520 U.S. 681, 692 (1997) (holding that a sitting president does not have immunity during his term from civil litigation about events occurring prior to entering office); *In re Grand Jury Proceedings*, 5 F. Supp. 2d 21 (D.D.C. 1998) (rejecting the privilege for information sought from a Deputy White House Counsel pertaining to potential presidential criminal misconduct), *aff'd in part, rev'd in part sub nom. In re Lindsey*, 158 F.3d 1263 (D.C. Cir. 1998).

369. H.R. Rep. No. 105–830, at 92 (''[I]ndeed, the President repeatedly argued that he should not be impeached precisely because these matters are purely private in nature.''); *id.* (quoting Rep. Bill McCollum) (''With regard to executive privilege, I don't think that there is any question that the President abused executive privilege here, because it can only be used to protect official functions.'').

370. *Id.* at 84 (quoting Rep. Bob Goodlatte).

371. H.R. Rep. No. 93–1305, at 1–4.

372 *Id.* at 203–04 (quoting President Nixon as saying ''I want you all to stonewall it, let them plead the Fifth Amendment, cover-up or anything else, if it'll save it—save the plan. That's the whole point.'').

373 *Id.* at 188 (reflecting a vote of 21–17).

374. 3 *The Debates in the Several State Conventions on the Adoption of the Federal Constitution*, at 401 (Jonathan Elliot 2nd ed. 1987).

375. H.R. Rep. No. 105–830, at 85.

376 *Id.* at 84 (quoting Rep. Bob Goodlatte).

377. *Id.*

378. *Id.* at 92 (quoting Rep. George Gekas).

379. *Clinton Judiciary Comm. Hearing on Background of Impeachment, supra* note 344, at 54 (written statement of Professor Michael J. Gerhardt, The College of William & Mary School of Law) (emphasis added).

380. *E.g.*, Oct. 4, 2019 Letter from Elijah E. Cummings, *supra* note 281; *see infra* Appendix B (listing subpoenas). The HPSCI Majority Report also relies on several ''[d]ocument [p]roduction[s]'' from AT&T and Verizon, reportedly in response to subpoenas issued by Chairman Schiff beginning in September before House Resolution 660 was passed. *See* Editorial Bd., *Schiff's Surveillance State*, Wall St. J. (Dec. 4, 2019), https://perma.cc/2ZQP-JW5V; HPSCI Report at 31 n.49, 80 n.529.

381. U.S. Const. art. I, §2, cl. 5.

382. Memorandum from Steven A. Engel, Assistant Attorney General, Office of Legal Counsel, to Pat A. Cipollone, Counsel to the President, *Re: House Committees' Authority to Investigate for Impeachment*, at 1 (Jan. 19, 2020) (emphasis in original) (*Impeachment Inquiry Authorizatio*n), infra Appendix C.

383. Impeachment is not just a political process unconstrained by law. ''The subjects of [an impeachment trial] are those offenses which proceed from the misconduct of public men, or, in other words, from the abuse or violation of some public trust''—that is, ''POLITICAL, as they relate chiefly to injuries done immediately to the society itself.'' The Federalist No. 65, at 396 (Alexander Hamilton) (Clinton Rossiter ed., 1961). But ''Hamilton didn't say the *process* of impeachment is entirely political. He said the *offense* has to be political.'' Alan M. Dershowitz, *Hamilton Wouldn't Impeach Trump*, Wall St. J. (Oct. 9, 2019), https://perma.cc/97PH-QPGT (emphasis in original). ''Hamilton's description in Federalist 65 should not be taken to mean that impeachments have a conventional political nature, unmoored from traditional criminal process.'' J. Richard Broughton, Conviction, Nullification, and the Limits of Impeachment As Politics, 68 Case W. Res. L. Rev. 275, 288 (2017). Federalist No. 65 goes to ''pains to show that the Senate can act in 'their judicial character as a 'court for the trial of impeachments,'' and ''[t]he entire essay is an attempt to show that the Senate can *overcome* its political nature as an elected body . . . and act as a proper court for the trial of impeachments.' '' Charles L. Black, Jr. & Philip Bobbitt, *Impeachment: A Handbook* 102 (2018) (emphasis in original). Hamilton emphasized that impeachment and removal of ''the accused'' must be based on partially legal considerations involving ''real demonstrations of innocence or guilt'' rather than purely political factors like ''the comparative strength of parties.'' *Id.* at 102–03 (quoting The Federalist No. 65). Thus, ''one should not diminish the significance of impeachment's legal aspects, particularly as they relate to the formalities of the criminal justice process. It is a hybrid of the political and the legal, a political process moderated by legal

formalities . . . .'' Broughton, supra note 383, at 289.

384. U.S. Const. amend. V.

385. *See, e.g.*, *Walters* v. *Nat'l Ass'n of Radiation Survivors*, 473 U.S. 305, 320 (1985) (''[T]he processes required by the Clause with respect to the termination of a protected interest will vary depending upon the importance attached to the interest and the particular circumstances under which the deprivation may occur.''); *Mathews* v. *Eldridge*, 424 U.S. 319, 334 (1976) (''Due process is flexible and calls for such procedural protections as the particular situation demands.'') (quoting *Morrissey* v. *Brewer*, 408 U.S. 471, 481 (1972)).

386. *See, e.g.*, *Watkins* v. *United States*, 354 U.S. 178, 188 (1957); *Quinn* v. *United States*, 349 U.S. 155, 161 (1955).

387. *Quinn*, 349 U.S. at 161.

388. U.S. Const. art. II, §4.

389. U.S. Const. art. II, §1, cl. 1.

390. U.S. Const. art. I, §3, cl. 7.

391. *See* U.S. Const. art. II, §1, cl. 5.

392. *See generally Board of Regents of State Colleges* v. *Roth*, 408 U.S. 564, 571–72 (1972) (''The Court has also made clear that the property interests protected by procedural due process extend well beyond actual ownership of real estate, chattels, or money.''); *Bolling* v. *Sharpe*, 347 U.S. 497, 499 (1954) (''Although the Court has not assumed to define liberty' with any great precision, that term is not confined to mere freedom from bodily restraint.'').

393. *Gilbert* v. *Homar*, 520 U.S. 924, 928–29 (1997).

394. U.S. Const. art. II, §4.

395. *Cf. U.S. Term Limits, Inc.* v. *Thornton*, 514 U.S. 779, 789 (1995).

396. *See, e.g.*, *Roth*, 408 U.S. at 573; *see also, e.g.*, *Doe* v. *Dep't of Justice*, 753 F.2d 1092, 1106–07 (D.C. Cir. 1985); *McGinnis* v. *D.C.*, 65 F. Supp. 3d 203, 213 (D.D.C. 2014).

397. *See, e.g.*, Message of Protest from Andrew Jackson, President, to the U.S. Senate (Apr. 15, 1834) (noting that the Framers were ''undoubtedly aware'' that impeachment, ''whatever might be its result, would in most cases be accompanied by so much of dishonor and reproach, solicitude and suffering, as to make the power of preferring it one of the highest solemnity and importance.''); 2 Joseph Story, *Commentaries on the Constitution* 686 (1833) (observing the ''notoriety of the [impeachment] proceedings'' and ''the deep extent to which they affect the reputations of the accused,'' even apart from the ''ignominy of a conviction'').

398. The Federalist No. 65, *supra note* 383, at 397 (Alexander Hamilton).

399. *Ohio Bell Tel. Co.* v. *Pub. Serv. Comm'n*, 301 U.S. 292, 302 (1937).

400. *See Marshall* v. *Jerrico, Inc.*, 446 U.S. 238, 242 (1980) (one of the ''central concerns of procedural due process'' is ''the prevention of unjustified or mistaken deprivations''); *Carey* v. *Piphus*, 435 U.S. 247, 259–60 (1978) (similar).

401. *See Hastings* v. *United States*, 802 F. Supp. 490, 504 (D.D.C. 1992), *vacated and remanded on other grounds by Hastings* v. *United States*, 988 F.2d 1280 (D.C. Cir. 1993) (per curiam).

402. *Id.*; U.S. Const. art. I, §3, cl. 6.

403. Dep't of Justice, Office of Legal Counsel, *Legal Aspects of Impeachment: An Overview*, at 45 (1974), https://perma.cc/X4HU-WVWS.

404. The Federalist No. 66, at 402 (Alexander Hamilton) (Clinton Rossiter ed., 1961).

405. John O. McGinnis, *Impeachment: The Structural derstanding*, 67 Geo. Wash. L. Rev. 650, 663 (1999).

406. *See supra* Standards Part B.2.

407. Akhil Reed Amar, On Impeaching Presidents, 28 Hofstra L. Rev. 291, 304 (1999).

408. *United States* v. *Louisiana*, 363 U.S. 1, 35 (1960); *see also United States* v. *Curtiss-Wright Corp.*, 299 U.S. 304, 319 (1936) (''The President is the sole organ of the nation in its external relations, and its sole representative with foreign nations.'') (quoting 10 Annals of Cong. 613 (1800) (statement of Rep. John Marshall)); *Ex parte Hennen*, 38 U.S. (13 Pet.) 225, 235 (1839).

409. *Crosby* v. *Nat'l Foreign Trade Council*, 530 U.S. 363, 381 (2000).

410. U.S. Const. art. I, §2, cl. 5.

411. U.S. Const. art. I, §5, cl. 2.

412. *See, e.g.*, *INS* v. *Chadha*, 462 U.S. 919, 940–41 (1983); *Buckley* v. *Valeo*, 424 U.S. 1, 132 (1976), *superseded on other grounds by statute as stated in McConnell* v. *FEC*, 540 U.S. 93 (2003).

413. *United States* v. *Ballin*, 144 U.S. 1, 5 (1892); *see also Barry* v. *United States ex rel. Cunningham*, 279 U.S. 597, 614 (1929); *Morgan* v. *United States*, 801 F.2d 445, 451 (D.C. Cir. 1986) (Scalia, J.).

414. *Senate Select Comm. on Presidential Campaign Activities* v. *Nixon*, 498 F.2d 725, 731 (D.C. Cir. 1974).

415. U.S. Const. art I, §5, cl. 2.

416. *See Attempted Exclusion of Agency Counsel from Congressional Depositions of Agency Employee*s, 43 Op. O.L.C. ___, *2 (2019).

417. *See supra* Part I.B.2(b).

418. 506 U.S. 224 (1993).

419. U.S. Const. art. I, §3, cl. 6; *see Nixon*, 506 U.S. at 226.

420. *Nixon*, 506 U.S. at 228–29.

421. *Id.* at 237 (emphasis added).

422. In concurrence, Justice Souter explained that some approaches by the Senate might be so extreme that they would merit judicial review under the Impeachment Trial Clause. As he explained: ''If the Senate were to act in a manner seriously threatening the integrity of its results, convicting, say, upon a coin toss, or upon a summary determination that an officer of the United States was simply 'a bad guy,' . . . judicial interference might well be appropriate.'' *Id.* at 253–54 (Souter, J., concurring in judgment) (quoting *Nixon*, 506 U.S. at 239 (White, J., concurring in judgment)).

423. *Id.* at 237–38. *Nixon* did not address whether the Due Process Clause constrained the conduct of an impeachment trial in the Senate because no due process claim was raised by the parties.

424. Letter from James Madison to Mr. ___ (1834), *in* 4 Letters and Other Writings of James Madison 349, 349 (Philadelphia, J.B. Lippincott & Co. 1865); *see also* William Baude, *Constitutional Liquidation*, 71 Stan. L. Rev. 1, 21, 35 (2019).

425. Charles L. Black & Philip Bobbitt, *Impeachment: A Handbook, New Edition* 22–23 (2018).

426. *Zivotofsky ex rel. Zivotofsky* v. *Clinton*, 566 U.S. 189, 219 (2012) (*Zivotofsky I*) (Breyer, J., dissenting); *see also Coleman* v. *Miller*, 307 U.S. 433, 454 (1939).

427. *Zivotofsky ex rel. Zivotofsky* v. *Kerry*, 135 S. Ct. 2076, 2091 (2015) (*Zivotofsky II*) (internal quotation marks omitted); *see also McCulloch* v. *Maryland*, 17 U.S. 316, 401 (1819).

428. *Noel Canning*, 573 U.S. at 525 (quoting Letter to Spencer Roane (Sept. 2, 1819), *in* 8 Writings of James Madison 450 (G. Hunt ed. 1908)).

429. *Youngstown Sheet & Tube Co.* v. *Sawyer*, 343 U.S. 579, 635 (1952) (Jackson, J., concurring).

430. *Curtiss-Wright Export Corp.*, 299 U.S. at 329.

431. *Bahlul* v. *United States*, 840 F.3d 757, 765 (D.C. Cir. 2016) (Kavanaugh, J., concurring).

432. 2 *Records of the Federal Convention of 1787*, at 550 (M. Farrand ed. 1966); *see, e.g.*, Richard M. Pious, *Impeaching the President: The Intersection of Constitutional and Popular Law*, 43 St. Louis L.J. 859, 872 (1999); *see also, e.g., Proceedings of the Senate Sitting for the Trial of William W. Belknap, Late Secretary of War, on the Articles of Impeachment Exhibited by the House of Representatives*, 44th Cong. 98 (1876) (statement of Sen. Timothy Howe); Scott S. Barker, *An Overview of Presidential Impeachment*, 47 Colo. Lawyer 30, 32 (Sept. 2018).

433. 6 Reg. Deb. 737 (1830) (statement of Rep. James Buchanan).

434. *See* III Hinds' Precedents §2319, at 681 (Judge Pickering); *id.* 2343, at 716 (Justice Chase).

435. *See* 32 Annals of Cong. 1715, 1715–16 (1818); *see, e.g.*, III Hinds' Precedents §2491, at 988 (Judge Thurston, 1825); *id.* §1736, at 97–98 (Vice President Calhoun, 1826); *id.* §§2365–2366 (Judge Peck, 1830–1831); *id.* §2491, at 989 (Judge Thurston, 1837); *id.* §2495, at 994 & n.4 (Judge Watrous, 1852); Cong. Globe, 35th Cong., 1st Sess. 2167 (1858) (statement of Rep. Horace Clark) (Judge Watrous, 1858); III Hinds' Precedents §2496, at 999 (Judge Watrous, 1858); *id.* §2504, at 1008 (Judge Delahay, 1873).

436. 6 Reg. Deb. 738 (1830) (statement of Rep. Spencer Pettis).

437. III Hinds' Precedents §2366, at 776.

438. 6 Reg. Deb. 737 (1830) (statement of Rep. James Buchanan).

439. *Id.* at 737–38 (statement of Rep. Charles Ingersoll).

440. *Id.* at 738 (emphasis added).

441. *Id.* (statement of Rep. Spencer Pettis).

442. *See* III Hinds' Precedents §2365, at 774.

443. Cong. Globe, 42d Cong., 3d Sess. 2122 (1873) (emphasis added); III Hinds' Precedents §2506, at 1011 (noting, in Judge Durrell's impeachment in 1873, that ''[i]t has been the practice of the Committee on the Judiciary to hear the accused in matters of impeachment whenever thereto requested, by witnesses or by counsel, or by both'').

444. *E.g.*, H.R. Rep. No. 111–427, 111th Cong. 11–12 (2010) (Judge Porteous); 155 Cong. Rec. H7055, H7056 (2009) (Judge Kent) (statement of Rep. Adam Schiff); H.R. Rep. No. 101–36, 101st Cong. 15 (1989) (Judge Nixon); *Impeachment Inquiry: Hearings Before the Subcomm. on Criminal Justice of H.R. Comm. on the Jud.*, 100th Cong. 10–12; H.R. Rep. No. 100–810, 100th Cong. 11–12 (1988) (Judge Hastings); *Conduct of Harry E. Claiborne, U.S. Dist. Judge, D. Nev.: Hearing Before the Subcomm. on Courts, Civil Liberties, & Admin. of Justice of H.R. Comm. on the Jud.*, 99th Cong. 2–3, 6–7, 48–78; H.R. Rep. No. 99–688, 99th Cong. 4–5 (1986) (Judge Claiborne); *Justice William O. Douglas: First Report by the Special Subcomm. on H.R. Res. 920 of H.R. Comm. on the Judiciary*, 91st Cong. 12 (Comm. Print 1970); *Conduct of Albert W. Johnson & Albert L. Watson, U.S. Dist. Judges, M.D. Pa.: Hearing Before the Subcomm. of H.R. Comm. on the Judiciary*, 79th Cong. 3 (1946); *Conduct of Halsted L. Ritter, U.S. Dist. Judge, S.D. Fla.: Hearing Before the Subcomm. of H.R. Comm. on the Judiciary*, 73d Cong. 2–3, 12, 39, 86, 102, 148, 233 (1933); *Hearing Before the H.R. Special Comm. Appointed to Inquire into the Official Conduct of Judge Harold Louderbac*k, 72d Cong. 10–11, 33–34, 92, 109, 131–33, 329–30 (1932); *Conduct of Hon. Wright Patman Against the Sec'y of the Treasury: Hearings on H.R. Res. 92 Before the H.R. Comm. on the Judiciary*, 72d Cong. 6, 13–14, 53, 62–69, 152–177, 197 (1932) (Sec'y of Treasury Andrew W. Mellon); *Conduct of Grover M. Moscowitz: Hearing Before H.R. Special Comm.*, 70th Cong. 1–2, 4, 15, 18 (1929); *Conduct of Harry B. Anderson: Hearing Before H.R. Comm. on Judiciary*, 71st Cong. 2, 5–7, 48–49 (1931); *Charges Against Hon. Frank Cooper: Hearing on H.R. Res. 398 & 415 Before H.R. Comm. on the Judiciary*, 69th Cong. 1, 12 (1927); *Charges of Impeachment Against Frederick A. Fenning: Hearing on H.R. Res. 228 Before H.R. Comm. on the Judiciary*, 69th Cong. 10, 153, 366, 520–21, 523, 566–70, 1092–93 (1926); *Conduct of George W. English: Hearing Before the H. Special Comm.*, 69th Cong. 5–7, 48–53, 81–84, 95–96, 106–08, 126–27, 149–55, 212–216, 239–40,

243–45 (1925); *Hearing Before H.R. Comm. on the Judiciary*, 68th Cong. 1, 9–10, 26, 36–37 (1925) (Judge Baker); VI Cannon's Precedents §537, at 771 (Att'y Gen. Daugherty); *Conduct of Judge Kenesaw Mountain Landis: Hearing Before H.R. Comm. on Judiciary*, 66th Cong. 7 (1921); H.R. Rep. No. 66–544, 64th Cong. (1916), in 53 Cong. Rec. 6137 (1916) (U.S. Dist. Att'y Marshall); *Judge Alston G. Dayton: Hearings Before H.R. Comm. on Judiciary & Special Subcomm. Thereof*, 63d Cong. 210 (1915); *Daniel Thew Wright: Hearings Before Subcomm. of H.R. Comm. on the Judiciary*, 63d Cong. 8–9 (1914); *Conduct of Emory Speer: Hearings Before Subcomm. of H.R. Comm. on the Judiciary*, 63d Cong. 23 (1914); 48 Cong. Rec. 8907 (1912) (Judge Archbald); VI Cannon's Precedents §526, at 745 (Judge Hanford); *Hearings Before Subcomm. of H.R. Comm. on the Judiciary upon the Articles of Impeachment of Lebbeus R. Wilfley, Judge of U.S. Ct. for China*, 60th Cong. 3–4 (1908); *Impeachment of Judge Charles Swayne: Evidence Before the Subcomm. of H.R. Comm. on the Judiciary*, 58th Cong. III (1904); III Hinds' Precedents §2520, at 1034 (Judge Ricks); *id.* §2518, at 1031 (Judge Boarman); *id.* §2516, at 1027 (Judge Blodgett); *id.* §2445, at 904 (Sec'y of War Belknap); *id.* §2514, at 1024 (Consul-Gen. Seward); H.R. Rep. No. 43–626, 43d Cong. V (1874) (Judge W. Story, J.); III Hinds' Precedents §2507, at 1011 (Judge Durell); *id.* §2512, at 1021 (Judge Busteed); Cong. Globe, 42d Cong., 3d Sess. 2124 (1873) (Judge Sherman); III Hinds Precedents §2504, at 1008 (Judge Delahay).

445. *See, e.g.*, William Baude, *Rethinking the Federal Eminent Domain Power*, 122 Yale L.J. 1738, 1811 (2013) (explaining that the Founders envisioned that ''post-ratification practice can serve to give concrete meaning to a constitutional provision even if it was vague as an original matter'' and that ''this is consistent with an originalist theory of constitutional construction''); Caleb Nelson, *Originalism and Interpretive Conventions*, 70 U. Chi. L. Rev. 519, 521 (2003); *see generally* Baude, *Constitutional Liquidation*, *supra* note 424.

446. *See NLRB* v. *Noel Canning*, 573 U.S. 513, 525 (2014) (''These precedents show that this Court has treated practice as an important interpretive factor even when the nature or longevity of that practice is subject to dispute, and even when that practice began after the founding era.''); *Free Enter. Fund* v. *Public Co. Accounting Oversight Bd.*, 561 U.S. 477, 505 (2010) (a ''handful of isolated'' examples cannot overcome the otherwise settled ''past practice of Congress''); *see also, e.g.*, *Dames & Moore* v. *Regan*, 453 U.S. 654, 684 (1981).

447. Charles W. Johnson et al., *House Practice: A Guide to the Rules, Precedents, and Procedures of the House*, 115th Cong., 1st Sess., ch. 27, §7, at 616 (2017), https://perma.cc/RB2S-Q965 (*House Practice*) (citing, as support for this ''modern practice,'' the 1876 impeachment investigation of William Belknap in III Hinds' Precedents §2445, at 904).

448. *Impeachment Articles Referred on John Koskinen (Part II): Hearing Before the H.R. Comm. on the Judiciary*, 114th Cong. 3 (2016) (statement of Rep. Jerrold Nadler).

449. *Hearing Pursuant to H.R. Res. 581 Before the H.R. Comm. on the Judiciary: Appearance of Independent Counsel*, 105th Cong. 6 (Nov. 19, 1998) (*Clinton Independent Counsel Hearing*) (statement of Rep. Jerrold Nadler).

450. *Impeachment Articles Referred on John Koskinen (Part III): Hearing Before the H.R. Comm. on the Judiciary*, 114th Cong. 30 (2016) (statement of Rep. Hank Johnson).

451. President Johnson was apparently ''notified of what was going on, but never asked to appear''—a fact that Judiciary Committee members later found significant in discounting President Johnson's impeachment as a precedent. Cong. Globe, 42d Cong., 3d Sess., 2122–23 (1873) (statement of Mr. Butler during impeachment investigation of Judge Sherman).

452. *Authorization of an Inquiry into Whether Grounds Exist for the Impeachment of William Jefferson Clinton, President of the United States: Meeting of the H.R. Comm. on the Judiciary; Presentation by Inquiry Staff Consideration of Inquiry Resolution; Adoption of Inquiry Procedures*, 105th Cong. 220 (Comm. Print 1998) (*Clinton Impeachment Inquiry Procedures*); *see also* H.R. Rep. No. 105–795, at 25–26; 3 Deschler's Precedents ch. 14, §6.5, at 2046 (same); H.R. Comm. on the Judiciary, *Impeachment of Richard M. Nixon, President of the United States*, H.R. Rep. No. 93–1305, 93d Cong. 8–9 (1974) (same, Nixon impeachment).

453. *Clinton Impeachment Inquiry Procedures*, *supra* note 452, at 220; 3 Deschler's Precedents ch. 14, §6.5, at 2045–47 (Nixon Impeachment Inquiry Procedures); *see also* H.R. Rep. No. 93–1305, at 8–9 (affording the President Nixon's counsel the ''opportunity to . . . ask such questions of the witnesses as the Committee deemed appropriate'').

454. *See Impeachment Inquiry Pursuant to H.R. Res. 581: Presentations by Investigative Counsel*, 105th Cong. 93 (Dec. 10, 1998); *Hearing Before the H.R. Comm. on the Judiciary: Impeachment Inquiry Pursuant to H.R. Res. 581: Presentation on Behalf of the President*, 105th Cong. 69 (Dec. 8–9, 1998) (*Clinton Presentation on Behalf of the President*).

455. H.R. Res. 581 §2(b); 3 Deschler's Precedents ch. 14, §6.5, at 2046; H.R. Res. 803 §2(b).

456 President Clinton's counsel gave opening and closing statements, called 14 expert witnesses, and cross-examined the witnesses. *See generally Clinton Presentation on Behalf of the President*, *supra* note 454; *Submission by Counsel for President Clinton to the H.R. Comm. on the Judiciary*, H.R. Comm. on the Judiciary, Comm. Print, Ser. No. 16, 105th Cong., 2nd Sess. (1998) (*Submission by Counsel for President Clinton*); H.R. Comm. on the Judiciary, *Impeachment of William Jefferson Clinton, President of the United States*, H.R. Rep. No. 105–830, 105th Cong. 127 (1998); *Clinton Judiciary Comm. Hearing Appearance of Independent Counsel*, *supra* note 449. President Nixon's counsel attended all Committee hearings to hear the initial presentation of evidence, submitted an 800-plus page response, gave a two-day oral argument, questioned witnesses, objected to testimony, submitted a 151-page closing brief, and was given all ''the time that you want'' to argue. *See Statement of Information Submitted on Behalf of President Nixon: Hearings Pursuant to H.R. Res. 803 Before the H.R. Comm. on the Judiciary*, 93d Cong. (1974) (Books I–IV); *Hearings Pursuant to H.R. Res. 803 Before the H.R. Comm. on the Judiciary*, 93d Cong. 1719–1866 (June 27–28, 1974); *Testimony of Witnesses: Hearings Pursuant to H.R. Res. 803 Before the H.R. Comm. on the Judiciary*, 93d Cong. (1974); *id.*, Book I at 70–90, 135–42, 232–41; *id.*, Book II at 29–55, 160–65, 196–98, 216–17, 257–88; *id.*, Book III at 107–23, 134, 179–81, 399–45, 517–18, 669–92, 1888; 10 Weekly Comp. Pres. Docs. 840 (1974).

457. *See Clinton Presentation on Behalf of the President*, *supra* note 454; *Submission by Counsel for President Clinton*, *supra* note 456.

458. H.R. Rep. No. 105–830, at 127; *see generally Clinton Independent Counsel Hearing*, *supra* note 449.

459. *United States* v. *James Daniel Good Real Prop.*, 510 U.S. 43, 48 (1993) (emphasis added).

460. *Chambers* v. *Miss.*, 410 U.S. 284, 294 (1973); *see also, e.g.*, *Greene* v. *McElroy*, 360 U.S. 474, 496 (1959).

461. *Perry* v. *Leeke*, 488 U.S. 272, 283 n.7 (1989) (quoting 5 Wigmore, Evidence §1367 (Chadbourn rev. 1974)).

462. *Id.*

463. *Id.* (quoting 4 J. Weinstein, Evidence §800[01] (1988)).

464. *Id.*

465. *Goldberg* v. *Kelly*, 397 U.S. 254, 269 (1970).

466. *See supra* Part II.B.2.

467. *See generally supra* notes 443–454 and accompanying text.

468. *See, e.g.*, *Background and History of Impeachment: Hearing Before the Subcomm. on the Constitution of the H.R. Comm. on the Judiciary*, 105th Cong. 17 (1998) (statement of Rep. Jerrold Nadler) (in the context of a House impeachment investigation, ''due process mean[s] . . . the right to be informed of the law, of the charges against you, the right to confront the witnesses against you, to call your own witnesses, and to have the assistance of counsel''); H.R. Rep. No. 111–427, 111th Cong. 11–12 (2010); H.R. Rep. No. 111–159, 111th Cong. 14 (2009); H.R. Rep. No. 105–830, at 265–66 (''[I]mpeachment not only mandates due process, but [] 'due process quadrupled.' '').

469. *See, e.g.*, T. Morrison Dep. Tr. at 8:14–15 (Oct. 31, 2019).

470. 116th Congress Regulations for Use of Deposition Authority §3, in 165 Cong. Rec. H1216 (2019).

471. *See, e.g.*, A. Vindman Dep. Tr. at 77–80, 82, 274–75 (Oct. 29, 2019); Morrison Dep. Tr. at 69:23–70:5.

472. *See* David M. Drucker, *Impeachment Spin Win: Democrats Killing GOP in Testimony Leak Game*, Wash. Examiner (Nov. 1, 2019), https://perma.cc/FC7T-FZ49 (''House Democrats are crushing Republicans with the use of testimony to frame the impeachment of President Trump for American voters, weaponizing selective leaks from closed-door depositions to portray a commander in chief that abused his power.''); *see also, e.g.*, The Editorial Bd., *Schiff's Secret Bombshells*, Wall St. J. (Oct. 23, 2019), https://perma.cc/T964-8DMS; Russell Berman & Elaine Godfrey, *The Closed-Door Impeachment*, The Atlantic (Oct. 19, 2019), https://perma.cc/JPT8-W7KB.

473. HJC Report at 37.

474. *See supra* Part II.B.2; *see supra* note 443–454 and accompanying text.

475. H.R. Rep. No. 105–830, at 210–11 (Minority Views).

476. Laurence Tribe & Joshua Matz, *To End a Presidency: The Power of Impeachment* 78 (2018).

477. ''[T]he invocation of grand jury interests is not 'some talisman that dissolves all constitutional protections.' '' *Butterworth* v. *Smith*, 494 U.S. 624, 630 (1990) (quoting *United States* v. *Dionisio*, 410 U.S. 1, 11 (1973)). Grand juries do not ''enjoy blanket exemption from the commands of due process.'' *United States* v. *Briggs*, 514 F.2d 794, 804 (5th Cir. 1975); Sara Sun Beale et al., *Grand Jury Law and Practice* §2:4 n.1 (2d ed. 2019); *see, e.g.*, *United States* v. *Calandra*, 414 U.S. 338, 346 (1974); *Peters* v. *Kiff*, 407 U.S. 493, 504 (1972) (plurality opinion of Marshall, J.); *United States* v. *Hodge*, 496 F.2d 87, 88 (5th Cir. 1974).

478. *Illinois* v. *Abbott & Assocs., Inc.*, 460 U.S. 557, 566 n.11 (1983).

479. *See, e.g.*, *United States* v. *Procter & Gamble Co.*, 356 U.S. 677, 681 n.6 (1958).

480. *In re Am. Historical Ass'n*, 62 F. Supp. 2d 1100, 1103 (S.D.N.Y. 1999); *see also, e.g.*, *Procter & Gamble Co.*, 356 U.S. at 681 n.6; *Douglas Oil Co. of Cal.* v. *Petrol Stops Nw.*, 441 U.S. 211, 219 (1979).

481. *See supra* note 472 and accompanying text.

482. *See* Fed. R. Crim. P. 6(e); 18 U.S.C. §§401(3), 641, 1503 (2018); *see, e.g.*, *United States* v. *Jeter*, 775 F.2d 670, 675–82 (6th Cir. 1985); *Martin* v. *Consultants & Adm'rs, Inc.*, 966 F.2d 1078, 1097 (7th Cir. 1992); *In re Sealed Case No. 99–3091*, 192 F.3d 995, 1001 (D.C. Cir. 1999) (per curiam); Beale et al., *supra* note 477, §5:6, at 5–28.

483. *Polk Cty.* v. *Dodson*, 454 U.S. 312, 318 (1981); *see supra* notes 459–465 and accompanying text.

484. H.R. Res. 660 §2(1).

485. H.R. Rep. No. 105–830, at 126–127; 3 Deschler's Precedents ch. 14, §6.5, at 2046–47.
486. *See supra* notes 452–458 and accompanying text.
487. *See* 165 Cong. Rec. E1357 (2019) (Impeachment Inquiry Procedures in the Committee on the Judiciary Pursuant to H.R. Res. 660).
488. Letter from Jerrold Nadler, Chairman, H.R. Comm. on Judiciary, to President Donald J. Trump, at 1 (Nov. 26, 2019).
489. *See* Press Release, House Judiciary Committee, Wednesday: House Judiciary to Hold Hearing on Constitutional Grounds for Presidential Impeachment (Dec. 2, 2019), https://perma.cc/5PFE-LCS5.
490. Letter from Charles F.C. Ruff, Counsel to the President, et al., to Henry J. Hyde, Chairman, H.R. Comm. on Judiciary, et al. (Oct. 21, 1998); Guy Gugliotta, *House Hearing Set on Impeachment History*, Wash. Post (Oct. 24, 1998), https://perma.cc/2LDX-XDL2.
491. Letter from Pat A. Cipollone, Counsel to the President, to Jerrold Nadler, Chairman, H.R. Comm. on Judiciary, at 4 (Dec. 1, 2019).
492. Letter from Jerrold Nadler, Chairman, H.R. Comm. on Judiciary, to President Donald J. Trump (Nov. 29, 2019).
493. *See id*.
494. Dec. 1, 2019 Letter from Pat A. Cipollone, *supra* note 491, at 4.
495. *Id*. (''We stand ready to meet with you to discuss a plan for these proceedings at your convenience.'').
496. Nicholas Fandos, *Pelosi Says House Will Draft Impeachment Charges Against Trump*, N.Y. Times (Dec. 5, 2019), https://perma.cc/L8PG-23DL (Speaker Pelosi: ''Today, I am asking our Chairman to proceed with articles of impeachment.'').
497. Letter from Doug Collins, Ranking Member, H.R. Comm. on Judiciary, et al., to Jerrold Nadler, Chairman, H.R. Comm. on Judiciary, at 2 (Nov. 12, 2019); Letter from Doug Collins, Ranking Member, H.R. Comm. on Judiciary, to Jerrold Nadler, Chairman, H.R. Comm. on Judiciary, at 1–2 (Nov. 14, 2019); Letter from Doug Collins, Ranking Member, H.R. Comm. on Judiciary, to Jerrold Nadler, Chairman, H.R. Comm. on Judiciary, at 6 (Nov. 18, 2019); Letter from Doug Collins, Ranking Member, H.R. Comm. on Judiciary, to Jerrold Nadler, Chairman, H.R. Comm. on Judiciary (Dec. 2, 2019); Letter from Doug Collins, Ranking Member, H.R. Comm. on Judiciary, to Jerrold Nadler, Chairman, H.R. Comm. on Judiciary (Dec. 4, 2019); Letter from Doug Collins, Ranking Member, H.R. Comm. on Judiciary, to Jerrold Nadler, Chairman, H.R. Comm. on Judiciary (Dec. 5, 2019); Letter from Doug Collins, Ranking Member, H.R. Comm. on Judiciary, to Jerrold Nadler, Chairman, H.R. Comm. on Judiciary (Dec. 6, 2019).
498. Letter from Jerrold Nadler, Chairman, H.R. Comm. on Judiciary, to Doug Collins, Ranking Member, H.R. Comm. on Judiciary (Dec. 8, 2019).
499. *See supra* notes 491–495, 497–498 and accompanying text.
500. Nov. 26, 2019 Letter from Jerrold Nadler, *supra* note 488.
501. *See* 165 Cong. Rec. E1357 (2019) (Impeachment Inquiry Procedures in the Committee on the Judiciary Pursuant to H.R. Res. 660 ¶F) (''Should the President unlawfully refuse to make witnesses available for testimony to, or to produce documents requested by, the investigative committees . . . , the chair shall have the discretion to impose appropriate remedies, including by denying specific requests by the President or his counsel under these procedures to call or question witnesses.''), *and* H.R. Rep. No. 116–266, 116th Cong. 9–10 (2019).
502. *Simmons* v. *United States*, 390 U.S. 377, 394 (1968); *see also Bourgeois* v. *Peters*, 387 F.3d 1303, 1324 (11th Cir. 2004).
503. HJC Report at 23–24.
504. *See* Rules of the House of Representatives, Rule XI, cl. 2(j)(1) (''[M]inority members of the committee *shall be entitled*, upon request to the chair by a majority of them before the completion of the hearing, to call witnesses selected by the minority to testify with respect to that measure or matter during at least one day of hearing thereon.'' (emphasis added)).
505. *E.g.*, *Pelosi Says House Will Draft Impeachment Charges Against Trump*, *supra* note 496.
506. *Impeachment Inquiry Pursuant to H.R. Res. 581: Consequences of Perjury and Related Crimes: Hearing Before the H.R. Comm. on the Judiciary*, 105th Cong. 18–19 (1998) (*Clinton Judiciary Comm. Hearing on Perjury*) (statement of Rep. Jerrold Nadler).
507. *Id*. at 19.
508. *Clinton Judiciary Comm. Hearing on Background of Impeachment*, *supra* note 468, at 17 (statement of Rep. Jerrold Nadler).
509. Press Release, Committee on the Judiciary, U.S. House of Representatives, Fact Sheet: GOP Attacks on IRS Commissioner are Not Impeachment Proceedings (Sept. 21, 2016) (emphasis added), https://perma.cc/6VYE-9JQV.
510. Madeline Conway, *Schiff: There Is Now 'More Than Circumstantial Evidence' of Trump-Russia Collusion*, Politico (Mar. 22, 2017), https://perma.cc/P5SL-BNM6.
511. *Rep. Schiff on MSNBC Morning Joe: Trump Must Come to Congress for Any Strike Against Iran*, YouTube (Sept. 17, 2019), https://perma.cc/J7X4-F6N2 (at 0:36–1:07).
512. *Schiff's False Claim His Committee Had Not Spoken to the Whistleblower*, Wash. Post (Oct. 4, 2019), https://www.washingtonpost.com/politics/2019/10/04/schiffs-false-claim-his-committee-had-not-spokenwhistleblower/.
513. Glenn Kessler, *About The Fact Checker* (Jan. 21, 2017), https://perma.cc/VCD4-N3NB.
514. Lori Robertson, *Schiff Wrong on Whistleblower Contact*, FactCheck.org (Oct. 6, 2019), https://perma.cc/BZ8FSWJW.
515. *See, e.g.*, Julie E. Barnes et al., *Schiff Got Early Account of Accusations as Whistle-Blower's Concerns Grew*, N.Y. Times (Oct. 2, 2019), https://perma.cc/7ZZ4-BLRC; Ellen Nakashima, *Whistleblower Sought Informal Guidance from Schiff's Committee Before Filing Complaint Against Trump*, Wash. Post (Oct. 2, 2019), https://perma.cc/SM2B-6BJN.
516. *''Whistleblower Disclosure'': Hearing of the H.R. Permanent Select Comm. on Intelligence*, 116th Cong. (Sept. 26, 2019) (statement of Rep. Adam Schiff); *see also, e.g.*, Daniel Dale, *Fact Check: Breaking Down Adam Schiff's Account of Trump's Ukraine Call*, CNN (Sept. 27, 2019), https://perma.cc/SM2B-6BJN.
517. *Rose v. Clark*, 478 U.S. 570, 577–78 (1986); *see also, e.g., United States v. Cronic*, 466 U.S. 648, 659 (1984) (holding that denial of representation by counsel ''makes the adversary process itself presumptively unreasonable'').
518. *Winterberger v. Gen. Teamsters Auto Truck Drivers & Helpers Local Union 162*, 558 F.2d 923, 925 (9th Cir. 1977) (administrative law).
519. *Bank of Nova Scotia v. United States*, 487 U.S. 250, 256 (1988); *see also, e.g., Beck v. Washington*, 369 U.S. 541, 546 (1962); *United States* v. *Estepa*, 471 F.2d 1132, 1137 (2d Cir. 1972) (Friendly, J.) (reversing judgment of conviction because the government's argument before the grand jury relied upon hearsay).
520. Zack Stanton, *Pelosi: Unless We Impeach Trump, 'Say Hello to a President-King'*, Politico (Dec. 18, 2019), https://perma.cc/3R3M-D356.
521. Matea Gold, *The Campaign to Impeach President Trump Has Begun*, Wash. Post (Jan. 20, 2017), https://perma.cc/HW4U-LBX6.
522. Mark S. Zaid (@MarkSZaidEsq), Twitter (Jan. 30, 2017, 6:54 PM), https://perma.cc/TUF2-NLP3.
523. H.R. Res. 438, 115th Cong. (2017).
524. Caitlin Oprysko, *Freshman Rep. Tlaib: Dem Majority Will 'Impeach the Motherf_er'*, Politico (Jan. 4, 2019), https://perma.cc/MAW7-WLQY.
525. H.R. Res. 438, 115th Cong. (2017).
526. Press Release, Dep't of Justice, Attorney General William P. Barr Delivers Remarks on the Release of the Report on the Investigation into Russian Interference in the 2016 Presidential Election (Apr. 18, 2019), https://perma.cc/K5ZJ-2KA2 (''[T]he evidence developed by the Special Counsel is not sufficient to establish that the President committed an obstruction-of-justice offense.'').
527. H.R. Res. 705, 115th Cong. (2018).
528. *See Trump v. Hawaii*, 138 S. Ct. 2392 (2018).
529. H.R. Res. 498, 116th Cong. (2019).
530. H.R. Res. 396, 116th Cong. (2019).
531. *In re Madison Guar. Sav. & Loan Ass'n*, No. 94–1, 1998 WL 472444, at *1 (D.C. Cir. Special Div. Jan. 16, 1998); *see also* H.R. Doc. No. 105–310, *Communication from Kenneth W. Starr, Independent Counsel, Transmitting A Referral*, 105th Cong., at 3 (1998). The House authorized the House Judiciary Committee's review of the Independent Counsel's referral two days after receiving it. H.R. Res. 525, 105th Cong. (1998).
532. H.R. Res. 611, 105th Cong. (1998).
533. The Senate Select Committee on Presidential Campaign Activities was established by the U.S. Senate on February 7, 1973 to investigate 1972 presidential campaign fundraising practices, the Watergate break-in, and the concealment of evidence relating to the break-in. H.R. Rep. No. 93–1305, at 116. Prior to the conclusion of that Committee's investigation, the House authorized the House Judiciary Committee's impeachment inquiry in February 1974. *Id*. at 6.
534. *Id*. at 10–11.
535. The House voted against President Johnson's impeachment in December 1867. III Hinds' Precedents §2407, at 843. In February 1868, the House transferred the record from the first impeachment inquiry to the Committee on Reconstruction as part of President Johnson's second impeachment inquiry. *Id*. §2408, at 845.
536. *Id*. §2400, at 823.
537. *Id*. §2416, at 855–56.
538. *Impeachment Inquiry into President Donald J. Trump: Constitutional Grounds for Presidential Impeachment: Hearing Before the H.R. Comm. on the Judiciary*, 116th Cong. (Dec. 4, 2019) (written statement of Professor Jonathan Turley, George Washington Univ. Law School, at 4 n.7, https://perma.cc/QU4H-FZC4); III Hinds' Precedents §2408, at 845 (referring evidence from the first impeachment inquiry to committee conducting second impeachment inquiry); *cf*. HJC Report at 47–48.
539. Raoul Berger, *Impeachment: The Constitutional Problems* 271–72 (1973).
540. Special Counsel Robert S. Mueller, III, *Report on the Investigation into Russian Interference in the 2016 Presidential Election*, vol. I at 2 (Mar. 2019), https://perma.cc/EGB4-WA76.
541. Kailani Koenig, *Schiff: 'More Than Circumstantial Evidence' Trump Associates Colluded With Russia*, NBC News (Mar. 22, 2017), https://perma.cc/P5KE-6BE4.
542. Tim Hains, *Adam Schiff: Republicans in Congress (Ryan, Gowdy, Nunes, Meadows, Jordan) Are Complicit in Trump's Lies*, RealClearPolitics (May 27, 2018), https://perma.cc/H5JM-RZHK.
543. *See* U.S. Dep't of Justice Office of the Inspector General, Review of Four FISA Applications and Other Aspects of the FBI's Crossfire Hurricane Investigation (Dec. 2019) (OIG FISA Report); *id*. at vii–viii, 95–96, 172, 256 n.400; Order, *In re Accuracy Concerns Regarding FBI Matters Submitted to the FISC*, No. Misc. 19–02 (FISA Ct. Dec. 17, 2019).
544. OIG FISA Report, *supra* note 543, at viii.

545. *Id.* at 160, 256 n.400; *see also* Jerry Dunleavy, *FBI Lawyer Under Criminal Investigation Altered Document to Say Carter Page 'Was Not a Source' for Another Agency*, Wash. Exam. (Dec. 9, 2019), https://perma.cc/3J4Z-WZCJ.

546. OIG FISA Report, *supra* note 543, at xiii; *Inspector General Report on Origins of FBI's Russia Inquiry: Hearing Before S. Comm. on the Judiciary*, C-SPAN at 1:19:22, 3:49:34 (Dec. 11, 2019), https://www.cspan.org/video/?466593-1/justice-department-ig-horowitz-defends-report-highlights-fisa-problems; *id.* at 4:59:16 (Inspector General Horowitz: ''There is such a range of conduct here that is inexplicable. And the answers we got were not satisfactory that we're left trying to understand how could all these errors have occurred over a nine-month period or so, among three teams, hand-picked, one of the highest profile, if not the highest profile, case in the FBI, going to the very top of the organization, involving a presidential campaign.'').

547. Press Release, Dep't of Justice, Attorney General William P. Barr Delivers Remarks on the Release of the Report on the Investigation into Russian Interference in the 2016 Presidential Election (Apr. 18, 2019), https://perma.cc/K5ZJ-2KA2.elected.''

548. Rebecca Shabad & Alex Moe, *Impeachment Inquiry Ramps Up as Judiciary Panel Adopts Procedural Guidelines*, NBC News (Sept. 12, 2019), https://perma.cc/6694-SWXX.

549. Clerk, H.R., Final Vote Results for Roll Call 695 on Agreeing to Article I of the Resolution (Dec. 18, 2019), http://clerk house.gov/evs/2019/roll695.xml; Clerk, H.R., Final Vote Results for Roll Call 696 on Agreeing to Article II of the Resolution (Dec. 18, 2019), http://clerk.house.gov/evs/2019/roll696.xml.

550. 144 Cong. Rec. H11786 (1998) (statement of Rep. Jerrold Nadler).

551. 145 Cong. Rec. S1582 (1999) (statement of Sen. Patrick Leahy) (emphasis added).

552. Brooke Singman & Guerin Hays, *Dem. Rep. Brushes Off Pelosi Pushback, Says He'll Pursue Trump Impeachment*, Fox News (Mar. 12, 2019), https://perma.cc/2LK6-W4TR (brackets in original).

553. Nicole Gaudiano & Eliza Collins, *Exclusive: Nancy Pelosi Vows 'Different World' for Trump, No More 'Rubber Stamp' in New Congress*, USA Today (Jan. 3, 2019), https://perma.cc/LF66-R7NU; *see also*, e.g., Brian Fung, *Pelosi Tamps Down Talk of Impeachment*, Wash. Post (Jan. 6, 2019), https://perma.cc/8VQ3-RYZ5 (Pelosi: ''If and when the time comes for impeachment, it will have to be something that has such a crescendo in a bipartisan way.'').

554. *Impeachment Inquiry into President Donald J. Trump: Constitutional Grounds for Presidential Impeachment Before the H.R. Comm. on the Judiciary*, 116th Cong. (Dec. 4, 2019) (written statement of Professor Jonathan Turley, Geo. Wash. Univ. Law Sch., at 4, https://perma.cc/QU4H-FZC4).

555. Justine Coleman, *Pelosi Reaction to Democrats Clapping After Impeachment Vote Goes Viral*, The Hill (Dec. 19, 2019), https://perma.cc/LJ5U-E8VA.

556. The Federalist No. 65, at 396 (Alexander Hamilton) (Clinton Rossiter ed., 1961).

557. *Id.* at 400.

558. *Id.* at 396–97.

559. The Federalist No. 66, at 402 (Alexander Hamilton) (Clinton Rossiter ed., 1961).

560. H.R. Res. 755, 116th Cong. art. I (2019).

561. July 25 Call Mem., *infra* Appendix A.

562. *See infra* Part III.B.2.

563. July 25 Call Mem., *infra* Appendix A, at 2; *see also Impeachment Inquiry: Amb. Kurt Volker and Mr. Timothy Morrison Before the H.R. Permanent Select Comm. on Intelligence*, 116th Cong. 64 (Nov. 19, 2019) (Volker-Morrison Public Hearing) (''The President was concerned that the United States seemed to—to bear the exclusive brunt of security assistance to Ukraine. He wanted to see the Europeans step up and contribute more security assistance.'').

564. July 25 Call Mem., *infra* Appendix A, at 2.

565. *See, e.g.*, Sharyl Attkisson, *Timeline of Alleged Ukrainian-Democrat Meddling in 2016 Presidential Election*, Epoch Times (Nov. 27, 2019), https://perma.cc/9EYP-9RUE; Andrew E. Kramer, *Ukraine Court Rules Manafort Disclosure Caused 'Meddling' in U.S. Election*, N.Y. Times (Dec. 12, 2018), https://perma.cc/87B2-XYAN; Kenneth P. Vogel & David Stern, *Ukrainian Efforts to Sabotage Trump Backfire*, Politico (Jan. 11, 2017), https://perma.cc/5K56-46YG; Roman Olearchyk, *Ukraine's Leaders Campaign Against 'Pro-Putin' Trump*, Financial Times (Aug. 28, 2016), https://www.ft.com/content/c98078d0-6ae7-11e6-a0b1-d87a9fea034f; Press Release, *Senators Seek Interviews on Reported Coordination Between Ukrainian Officials, DNC Consultant to Aid Clinton in 2016 Elections* (Dec. 6, 2019), https://perma.cc/PAE6-RV78?type=image.

566. July 25 Call Mem., *infra* Appendix A, at 3.

567. *See infra* note 737 and accompanying text; July 25 Call Mem., infra Appendix A at 3.

568. F. Hill Dep. Tr. at 76:20–77:11 (Oct. 14, 2019); see also C. Croft Dep. Tr. at 125:12–126:15 (Oct. 30, 2019). Senator Johnson recalled similar concerns over ''rumors that [President] Zelensky was going to appoint Andriy Bohdan, the lawyer for oligarch Igor Kolomoisky, as his chief of staff.'' Letter from Sen. Ron Johnson to Rep. Jim Jordan, Ranking Member, H.R. Comm. on Oversight & Reform, and Rep. Devin Nunes, Ranking Member, H.R. Permanent Select Comm. on Intelligence, at 3 (Nov. 18, 2019). And Ambassadors Taylor and Volker even discussed these concerns directly with President Zelensky. *See* W. Taylor Dep. Tr. at 86:13–22 (Oct. 22, 2019); K. Volker Interview Tr. at 137:15–25 (Oct. 3, 2019).

569. *See* July 25 Call Mem., *infr*a Appendix A, at 4 (President Zelensky understood President Trump's comments to be referring ''specifically to the company'').

570. *See* Tim Hains, *FLASHBACK, 2018: Joe Biden Brags at CFR Meeting About Withholding Aid to Ukraine to Force Firing of Prosecutor*, RealClearPolitics (Sept. 27, 2019), https://www.realclearpolitics.com/video/2019/09/27/flashback_2018_joe_biden_brags_at_cfr_meeting_about_withholding_aid_to_ukraine_to_force_firing_of_prosecutor.html.

571. *See* Adam Taylor, *Hunter Biden's New Job at a Ukrainian Gas Company Is a Problem for U.S. Soft Power*, Wash. Post (May 14, 2014), https://perma.cc/Q4QS-4H3B.

572. *See, e.g.*, Kenneth P. Vogel & Iuliia Mendel, *Biden Faces Conflict of Interest Questions That Are Being Promoted by Trump and Allies*, N.Y. Times (May 1, 2019), https://perma.cc/6A4G-2CRE (''Among those who had a stake in the outcome was Hunter Biden, Mr. Biden's younger son, who at the time was on the board of an energy company owned by a Ukrainian oligarch who had been in the sights of the fired prosecutor general.'').

573. Michael Kranish & David L. Stern, *As Vice President, Biden Said Ukraine Should Increase Gas Production. Then His Son Got a Job with a Ukrainian Gas Company*, Wash. Post (July 22, 2019), https://perma.cc/L24P-367Z (''In an email interview with The Post, Shokin [the fired prosecutor] said he believes his ouster was because of his interest in [Burisma]. . . . Had he remained in his post, Shokin said, he would have questioned Hunter Biden.'').

574. HJC Report at 121; *id.* at 101 (''He was given extensive talking points about corruption for his April 21 and July 25 calls, yet ignored them both times and did not mention corruption on either call.'').

575. *See* A. Vindman Dep. Tr. at 109, 241 (Oct. 29, 2019) (explaining that the NSC talking points discussed ''deliver[ing] on the anticorruption agenda'' and ''reinforc[ing] efforts to root out corruption'').

576. July 25 Call Mem., *infra* Appendix A, at 4.

577. Kyiv Post, *Zelensky Talks Trump, U.S. Elections, Giuliani at All-Day Press Marathon*, YouTube, at 0:17 (Oct. 10, 2019), https://youtu.be/iG5kVNm_R5Y?t=17.

578. *Id.* at 0:33, https://youtu.be/iG5kVNm_R5Y?t=33.

579. July 25 Call Mem., infra Appendix A, at 2–3.

580. HPSCI Report at XI.

581. July 25 Call Mem., *infra* Appendix A, at 3 (emphases added).

582. *Id.* at 2–3.

583. M. Yovanovitch Dep. Tr. at 314:15–18 (Oct. 11, 2019) (''[Q.] The foreign aid that was has been reported as being held up, it doesn't relate to Javelins, does it? [A.] No. At least I'm not aware that it does.''); *id.* at 315:4–7 (''[Q.] But it was actually aid that had been appropriated and it had nothing to do with Javelins. Would you agree with that? [A.] That's my understanding.''); T. Morrison Dep. Tr. at 79:25–80:2 (Oct. 31, 2019) (''[Q.] Okay. In your mind, are the Javelins separate from the security assistance funds? [A.] Yes.'').

584. *See* HPSCI Report at XI.

585. *See, e.g.*, Remarks By President Trump And Prime Minister Abe of Japan Before Bilateral Meeting, New York, NY (Sept. 25, 2019), https://perma.cc/6E4V-AYC4 (''So we did [China] a favor. But they're doing us a favor. But they're buying a lot of agricultural product and, in particular, where you are.''); Remarks by President Trump at the 2019 White House Business Session With Our Nation's Governors (Feb. 25, 2019), https://perma.cc/WK7Z-L82N (''And I said to President Xi—I said, 'President, you have to do me a favor. As part of our trade deal. . .' ''); Remarks by President Trump at Workforce Development Roundtable (July 26, 2018), https://perma.cc/AT2V-U4PQ (''I said to the Europeans, I said, 'Do me a favor. Would you go out to the farms in Iowa and all the different places in the Midwest? Would you buy a lot of soybeans, right now?' ''); Geoff Brumfiel, *Trump Says North Korea Will Destroy Missile Site. But Which One?*, NPR (June 12, 2018), https://perma.cc/LKV5-7YAG (''I said, 'Do me a favor. You've got this missile engine testing site. . . .' I said, 'Can you close it up?' ''); Transcript: Donald Trump's New York Press Conference (Sept. 26, 2018), https://perma.cc/G6Y9-XHST (''Japan just gave us some numbers that are incredible. . . . I said, 'You have to do me a favor. We don't want these big deficits. You're going to have to buy more.' '').

586. NSC Senior Director Morrison raised concerns ''about a potential leak of the [transcript],'' but he had no concern about the substance of the call. Morrison Dep. Tr. at 16:4–10.

587. Vindman Dep. Tr. at 155.

588. *Id.* at 18–19.

589. *Impeachment Inquiry: Ms. Jennifer Williams & Lt. Col. Alexander Vindman Before the H.R. Permanent Select Comm. on Intelligence*, 116th Cong. 130–31 (Nov. 19, 2019) (Williams-Vindman Public Hearing); Vindman Dep. Tr. at 155.

590. Morrison Dep. Tr. at 60.

591. Press Release, The White House, Statement from Lt. Gen. Keith Kellogg, National Security Advisor to Vice President Mike Pence (Nov. 19, 2019), https://perma.cc/7FT8-U3QY.

592. Press Release, President of Ukraine, Volodymyr Zelensky Had a Phone Conversation with President of the United States (July 25, 2019), https://perma.cc/DKP3-VKCH.

593. Simon Shuster, '*I Don't Trust Anyone at All.' Ukrainian President Volodymyr Zelensky Speaks Out on Trump, Putin, and a Divided Europe*, Time (Dec. 2, 2019), https://perma.cc/Z65U-FKAR.

594. *Ukraine President Downplays Trump Pressures in All-Day Media Marathon*, Politico (Oct. 10, 2019), https://perma.cc/QVM-HFNK (''Responding to questions from The Associated Press, Zelenskiy said he only learned after their July 25 phone call that the U.S. had blocked hundreds of millions of dollars in military aid to Ukraine. 'We didn't speak about this' during the July call, Zelenskiy said. There was no blackmail.' '').

595. *See President Trump Meeting with Ukrainian President*, C-SPAN, at 08:10 (Sept. 25, 2019), https://www.c-span.org/video/?464711-1/president-trump-meets-ukrainian-leader-memo-release (''[W]e had, I think, [a] good phone call. It was normal. We spoke about many things. And I—so I think, and you read it, that nobody pushed—pushed me.''); Meg Wagner et al., *Ukraine President Insists ''No One Can Put Pressure on Me'' to Investigate Bidens*, CNN (Oct. 1, 2019), https://perma.cc/AAV7-74G4 (''I don't feel pressure. . . . I have lots of people who'd like to put pressure on me here and abroad. I'm the president of an independent Ukraine—no one can put pressure on me.'').

596. Volker Interview Tr. at 313:2–9.

597. Taylor Dep. Tr. at 31:6–8.

598. Croft Dep. Tr. at 117:7–12.

599. Matthias Williams, *Ukraine Minister Denies Trump Put Pressure on Zelenskiy During Call: Report*, Reuters (Sept. 21, 2019), https://perma.cc/J8TF-8SQ3.

600. Mairead McArdle, *Ukrainian Foreign Minister Denies Sondland Linked Military Aid Delay to Biden Investigation*, National Rev. (Nov. 14, 2019), https://perma.cc/DPF6-GB5V (citing Interfax-Ukraine); *see also* Matthias Williams, *U.S. Envoy Sondland Did Not Link Biden Probe to Aid: Ukraine Minister*, Reuters (Nov. 14, 2019), https://perma.cc/2URG-9H5Y (''I have never seen a direct relationship between investigations and security assistance,' [Ukraine Foreign Minister Vadym] Prystaiko was quoted as saying by Interfax.'').

601. Simon Shuster, *Exclusive: Top Ukraine Official Andriy Yermak Casts Doubt on Key Impeachment Testimony*, Time (Dec. 10, 2019), https://perma.cc/A93U-KVKF.

602. *See* Caitlin Emma & Connor O'Brien, *Trump Holds up Ukraine Military Aid Meant to Confront Russia*, Politico (Aug. 28, 2019), https://perma.cc/9FFS-B9WT.

603. Volker-Morrison Public Hearing, *supra* note 563, at 22; *see also id.* at 143; Volker Interview Tr. at 125:14–17 (''To my knowledge, the news about a hold on security assistance did not get into Ukrainian Government circles, as indicated to me by the current foreign minister, then diplomatic adviser, until the end of August.'').

604. Taylor Dep. Tr. at 119:21–24; *Impeachment Inquiry: Amb. William Taylor & Mr. George Kent Before the H.R. Permanent Select Comm. on Intelligence*, 116th Cong. 154:10–13 (Nov. 13, 2019) (Taylor-Kent Public Hearing) (''[Q.] Ambassador Taylor, earlier you were testifying that Ukrainian officials did not become aware of potential U.S. assistance being withheld until August 29th. Is that accurate? [A.] That's my understanding, Mr. Hurd.'').

605. Morrison Dep. Tr. at 17:11–12 (''I have no reason to believe the Ukrainians had any knowledge of the review until August 28, 2019.''); *see also* Volker-Morrison Public Hearing, *supra* note 563, at 68 (''[Q.] You mentioned the August 28th Politico article. Was that the first time that you believe the Ukrainians may have had a real sense that the aid was on hold? [A.] Yes.'').

606. Taylor-Kent Public Hearing, *supra* note 604, at 154:19–23 (''[Q.] Mr. Kent, . . . when was the first time a Ukrainian official contacted you, concerned about potential withholding of USAID [sic]? [A.] It was after the article in Politico came out, in that first intense week of September.''); G. Sondland Interview Tr. at 177:11–17 (Oct. 17, 2019) (testifying that ''I don't recall exactly when I learned that the Ukrainians learned'' but agreeing that ''by the time there was a Politico report . . . everyone would have known.'').

607. Stephanie Baker & Daryna Krasnolutska, *Ukraine's Fraught Summer Included a Rogue Embassy in Washington*, Bloomberg (Nov. 22, 2019), https://perma.cc/YUB5-E92S.

608. Andrew E. Kramer, *Trump's Hold on Military Aid Blindsided Top Ukrainian Officials*, N.Y. Times (Sept. 22, 2019), https://perma.cc/7PR9-DAAS.

609. *Ukraine's Fraught Summer Included a Rogue Embassy in Washington*, *supra* note 607 (''Had the top people in Kyiv known about the holdup earlier, they said, the matter would have been raised with National Security Advisor John Bolton during his visit on Aug. 27.'').

610. Taylor-Kent Public Hearing, *supra* note 604, at 108:4–19.

611. Volker Interview Tr. at 168:10–169:23.

612. Volker-Morrison Public Hearing, *supra* note 563, at 68 (''I received a text message from one of my Ukrainian counterparts on August 29th forwarding that article, and that's the first they raised it with me.''); Text Message from Andriy Yermak, Adviser to President Zelensky, to Kurt Volker, U.S. Special Rep. for Ukraine Negotiations, at KV00000020 (Aug. 29, 2019, 3:06:14 AM), https://perma.cc/PV4B-T6HM.

613. Volker Interview Tr. at 124:11–125:1 (emphasis added).

614. *Impeachment Inquiry: Amb. Gordon Sondland Before the H.R. Permanent Select Comm. on Intelligence*, 116th Cong. 40 (Nov. 20, 2019) (Sondland Public Hearing).

615. Letter from Sen. Ron Johnson, *supra* note 568, at 6.

616. Volker-Morrison Public Hearing, *supra* note 563, at 106 07.

617. Taylor-Kent Public Hearing, *supra* note 604, at 109:18–20 (testifying that his ''clear understanding'' ''came from Ambassador Sondland''); *id.* at 110:6–8 (''[Q.] You said you got this from Ambassador Sondland. [A.] That is correct.''); Taylor Dep. Tr. at 297:21–298:1 (''[Q.] But if I understand this correctly, you're telling us that Tim Morrison told you that Ambassador Sondland told him that the President told Ambassador Sondland that Zelensky would have to open an investigation into Biden?'' [A.] That's correct.''); *see also, e.g., id.* at 35:20–25, 38:13–16.

618. Morrison Dep. Tr. at 17:13–16.

619. Sondland Public Hearing, *supra* note 614, at 148–49 (emphasis added).

620. Sondland Interview Tr. at 35:8–11.

621. Declaration of Ambassador Gordon D. Sondland ¶ 4 (Nov. 4, 2019) (emphasis added).

622. Sondland Public Hearing, *supra* note 614, at 150–51.

623. HJC Report at 97 (quotations omitted).

624. M. Yovanovitch Dep. Tr. at 314:15–18 (Oct. 11, 2019) (''[Q.] . . . The foreign aid that was—has been reported as being held up, it doesn't relate to Javelins, does it? [A.] No. At least I'm not aware that it does.''); *id.* at 315:4–7 (''[Q.] But it was actually aid that had been appropriated and it had nothing to do with Javelins. Would you agree with that? [A.] That's my understanding.''); Morrison Dep. Tr. at 79:25–80:2 (Oct. 31, 2019) (''Q. Okay. In your mind, are the Javelins separate from the security assistance funds? A. Yes.'').

625. H.R. Res. 755, 116th Cong. art. I (2019); *see also* HPSCI Report at 24; HJC Report at 76.

626. Yovanovitch Dep. Tr. at 140:24–141:3 (''And I actually felt that in the 3 years that I was there, partly because of my efforts, but also the interagency team, and President Trump's decision to provide lethal weapons to Ukraine, that our policy actually got stronger over the last 3 years.'').

627. Yovanovitch Dep. Tr. at 144:14–16.

628. Taylor Dep. Tr. at 155:14–23.

629. G. Kent Interview Tr. at 294:10–17 (Oct. 15, 2019).

630. Volker-Morrison Public Hearing, *supra* note 563, at 58; *see also id.* at 58–59 (''[Q.] And for many years, there had been an initiative in the interagency to advocate for lethal defensive weaponry for Ukraine. Is that correct? [A.] That is correct. [Q.] And it wasn't until President Trump and his administration came in that that went through? [A.] That is correct.'').

631. Nov. 18, 2019 Letter from Sen. Ron Johnson, *supra* note 568, at 2.

632. Volker Interview Tr. at 80:6–7.

633. D. Hale Dep. Tr. at 85:2–3 (Nov. 6, 2019).

634. *Trump's Hold on Military Aid Blindsided Top Ukrainian Officials*, *supra* note 608.

635. Hale Dep. Tr. at 82:2–6.

636. *Impeachment Inquiry: Dr. Fiona Hill and Mr. David Holmes Before the H.R. Permanent Select Comm. on Intelligence*, 116th Cong. 75:17–19 (Nov. 21, 2019) (Hill-Holmes Public Hearing).

637. Trial Mem. of the U.S. House of Representatives at 26.

638. Hill Dep. Tr. at 118:19–22.

639. Yovanovitch Dep. Tr. at 142:10–16 (''Q. Were you aware of the President's deep-rooted skepticism about Ukraine's business environment? A. Yes. Q. And what did you know about that? A. That he—I mean, he shared that concern directly with President Poroshenko in their first meeting in the Oval Office.''); 143:8–10 (Q. The administration had concerns about corruption in Ukraine, correct? A. We all did.'').

640. Morrison Dep. Tr. at 16:16–17.

641. Croft Dep. Tr. at 21:20–22:5; *see also* The White House, President Trump Meets with President Poroshenko of Ukraine (Sept. 22, 2017), https://perma.cc/A5AC-PNS2 (''The President recommended that President Poroshenko continue working to eliminate corruption and improve Ukraine's business climate.'').

642. Croft Dep. Tr. at 32:16–25.

643. Hill Dep. Tr. at 34:7–13.

644. *See, e.g.*, Yovanovitch Dep. Tr. at 17:9–12; Taylor Dep. Tr. at 87:20–25; Kent Interview Tr. at 105:15–18, 151:2122.

645. Hale Dep. Tr. at 82:18–22.

646. Office of Mgmt. & Budget, *Budget of the U.S. Government Fiscal Year 2018*, at 13 (May 23, 2017), https://perma.cc/GE2U-MPMU.

647. Office of Mgmt. & Budget, *Budget of the U.S. Government Fiscal Year 2020*, at 71 (Mar. 11, 2019), https://perma.cc/5ER6-7A3Q.

648. Trial Mem. of the U.S. House of Representatives at 28.

649. *Id.*

650. Volker-Morrison Public Hearing, *supra* note 563, at 63.

651. *Id.* at 64.

652. Email from Eric Chewning, Chief of Staff, Office of the Secretary of Defense, to John Rood, Under Secretary of Defense for Policy, and Elaine McCusker, Under Secretary of Defense (Comptroller) (June 24, 2019), *available at* https://publicintegrity.org/national-security/trump-administration-officials-worried-ukraine- aid-halt-violated-spending-law (page 11); L. Cooper Dep. Tr. at 33 (Oct. 23, 2019) (summarizing follow-up questions from ''a meeting with the President'').

653. *See supra* Part III.A.1.
654. Nov. 18, 2019 Letter from Sen. Johnson, *supra* note 568, at 5.
655. Taylor Dep. Tr. at 35:8–19; *see also* J. Williams Dep. Tr. at 81:7–11 (Nov. 7, 2019) (the Vice President wanted to ''hear if there was more that European countries could do to support Ukraine''); Morrison Dep. Tr. at 224:19–225:6 (''[T]he President believed that the Europeans should be contributing more in security-sector assistance.'').
656. Cooper Dep. Tr. at 14.
657. July 25 Call Mem., *infra* Appendix A, at 2.
658. Karen DeYoung, *U.S. Withdrawing $100 Million in Aid to Afghanistan Amid Corruption Concerns*, Wash. Post (Sept. 19, 2019), https://perma.cc/TK8K-4332.
659. Rachel Frazin, *Trump: South Korea Should Pay 'Substantially More' for Defense Costs*, The Hill (Aug. 7. 2019), https://perma.cc/T672-JNN3.
660. Camilo Montoya-Galvez, *U.S. Cuts Millions in Aid to Central America, Fulfilling Trump's Vow*, CBS News (June 18, 2019), https://perma.cc/2K6V-337X.
661. Ben Gittleson & Conor Finnegan, *Trump Administration Releases Lebanon Military Aid After It Was Held Up for Months*, ABC News (Dec. 2, 2019), https://perma.cc/ B4YJ-Z77C.
662. Saphora Smith and Reuters, *Trump Admin Cancels $300m Aid to Pakistan over Terror Record*, NBC News (Sept. 2, 2018), https://perma.cc/U32X-8N69.
663. *Impeachment Inquiry: Ms. Laura Cooper and Mr. David Hale Before the H.R. Permanent Select Comm. on Intelligence*, 116th Cong. 22 (Cooper-Hale Public Hearing).
664. Hill Dep. Tr. at 225:9–12.
665. *Id.* at 254:20–24, 352:14–20.
666. Volker-Morrison Public Hearing, *supra* note 563, at 59–60.
667. Morrison Dep. Tr. at 165:6–11.
668. M. Sandy Dep. Tr. at 133:10–13 (Nov. 16, 2019).
669. Morrison Dep. Tr. at 127:10–16.
670. Hill Dep. Tr. at 76:6–8 (''There was, you know, speculation in all analytical circles, both in Ukraine and outside, that he might not be able to get a workable majority in the Ukrainian Parliament.'').
671. Morrison Dep. Tr. at 129:14–17.
672. *Id.* at 129:4–8.
673. *Id.* at 128:18–20.
674. *Id.* at 128:20–24.
675. *High Anti-Corruption Court Starts Work in Ukraine (Video)*, Ukrainian Independent Information Agency of News (UNIAN) (Sept. 5, 2019), https://perma.cc/2XNC-F8YF.
676. Morrison Dep. Tr. at 129:18–24.
677. Letter from Sen. Ron Johnson, *supra* note 568, at 6.
678. Letter from Sen. Rob Portman et al., to Mick Mulvaney, Director, Office of Management & Budget, at 1 (Sept. 3, 2019).
679. Letter from Eliot L. Engel, Chairman, H.R. Comm. on Foreign Affairs, and Michael T. McCaul, Ranking Member, H.R. Comm. on Foreign Affairs, to Mick Mulvaney, Director, Office of Management & Budget, and Russell Vought, Acting Director, Office of Management & Budget, at 1—2 (Sept. 5, 2019).
680. Morrison Dep. Tr. at 209:10–210:4; *see also id.* at 210:24 211:2.
681. *Id.* at 225:12–16; *see also* Press Release, Office of the President of Ukraine, Volodymyr Zelensky Discussed Military-Technical Assistance for Ukraine and Cooperation in the Energy Sphere with the U.S. Vice President (Sept. 1, 2019), https://perma.cc/4KKX-E9QL (explaining that ''[t]he U.S. Vice President raised the issue of reforms and fight against corruption that will be carried out by the new government'' and President Zelensky ''noted that Ukraine was determined to transform and emphasized that over 70 draft laws had been registered on the first day of work of the new parliament, including those aimed to overcome corruption.'').
682. Morrison Dep. Tr. at 225:8–11.
683. *Id.* at 242:12–243:7.
684. *Id.* at 243:2–7, 244:7–12.
685. *Id.* at 243:6–7.
686. *Id.* at 242:22–24.
687. *See President Trump Meeting with Ukrainian President*, *supra* note 595.
688. Morrison Dep. Tr. at 115:10–12.
689. *Id.* at 106:10–15, 107:2–6.
690. *Id.* at 106:10 107:4, 107:10–16.
691. *Id.* at 106:10–15.
692. *Id.* at 108:20–21.
693. Volker Interview Tr. at 127:12–14.
694. Morrison Dep. Tr. at 266:8–10 (''We were expecting the President to meet with President Zelensky on 1 September. It's the middle of August; it's about 2 weeks.'').
695. *See Foreign Ministry, Presidential Office Prepares Zelensky-Trump Meeting in Warsaw*, National News Agency of Ukraine (Aug. 22, 2019), https://perma.cc/EK2G-5RSZ.
696. Hale Dep. Tr. at 72:24 73:1; Volker Interview Tr. at 130:17–23 (''This was the President's trip to Warsaw as part of that World War II commemoration. That was when he cancelled because of the hurricane watch.''); Isabel Togoh, *Hurricane Dorian: Trump Cancels Poland Trip to Focus on Storm in Last-Minute Move*, Forbes (Aug. 30, 2019), https://perma.cc/TQ83-6QKD.
697. *See Ukraine President Downplays Trump Pressures in All-Day Media Marathon*, *supra* note 594.
698. Volker Interview Tr. at 78:5–9, 78:17–25; *see also* Kent Interview Tr. at 202:14–16 (''The time on a President's schedule is always subject to competing priorities.'').
699. Hill Dep. Tr. at 145:6–12.
700. Sondland Public Hearing, *supra* note 614, at 74.
701. Sondland Interview Tr. at 216:6–7.
702. *Id.* at 216:4–7.
703. Sondland Public Hearing, *supra* note 614, at 36.
704. Volker Interview Tr. at 36:1–9; 40:11–16.
705. Sondland Public Hearing, *supra* note 614, at 70.
706. *Id.*
707. H.R. Res. 755, 116th Cong. art. I.
708. HJC Report at 4–6.
709. *See Hunter Biden 'Was Paid $83,333 a Month by Ukrainian Gas Company to be a ''Ceremonial Figure''*, The Ukrainian Week (Oct. 20, 2019), https://perma.cc/7WBU-XHCJ; Tobias Hoonhout, *Hunter Biden Served as 'Ceremonial Figure' on Burisma Board for $80,000 Per Month*, National Rev. (Oct. 18, 2019), https://perma.cc/6RAH-J5GU; *FLASHBACK, 2018: Joe Biden Brags at CFR Meeting About Withholding Aid to Ukraine to Force Firing of Prosecutor*, *supra* note 570; *Biden Faces Conflict of Interest Questions That Are Being Promoted by Trump and Allies*, *supra* note 572.
710. *See, e.g.*, Taylor-Kent Public Hearing, *supra* note 604, at 25:3–5 (Kent: ''[I]n a briefing call with the national security staff of the Office of the Vice President in February of 2015, I raised my concern that Hunter Biden's status as a board member could create the perception of a conflict of interest.'').
711. *Ukrainian Efforts to Sabotage Trump Backfire*, *supra* note 565 (''[O]fficials there [at the Ukrainian embassy] became 'helpful' in Chalupa's efforts, she said, explaining that she traded information and leads with them. 'If I asked a question, they would provide guidance, or if there was someone I needed to follow up with.' '').
712. *Id.*
713. Natasha Bertrand & Kyle Cheney, *'I'm On A Mission To Testify,': Dem Ukraine Activist Eager for Impeachment Cameo*, Politico (Nov. 12, 2019), https://perma.cc/7RJR-6YQQ.
714. N. Ohr. Interview Tr., 115th Cong., 113–15 (Oct. 19, 2018), https://perma.cc/E3YE-QKYJ.
715. *Ukrainian Efforts to Sabotage Trump Backfire*, *supra* note 565.
716. *Id.*
717. *Ukraine's Leaders Campaign Against 'Pro-Putin' Trump*, *supra* note 565 (''Hillary Clinton, the Democratic nominee, is backed by the pro-western government that took power after Mr. Yanukovich was ousted by street protests in 2014. . . . If the Republican candidate [Donald Trump] loses in November, some observers suggest Kiev's actions may have played at least a small role.'').
718. *Id.* (internal quotation marks omitted).
719. Hill-Holmes Public Hearing, *supra* note 636, at 112:2–9.
720. *United States* v. *Concord Mgmt. & Consulting LLC*, 347 F. Supp. 3d 38, 56 n.9 (D.D.C. 2018) (ellipsis in original) (quoting Bluman v. FEC, 800 F. Supp. 2d 281., 288 (D.D.C. 2011)).
721. *See 52* U.S.C. §30121 (2018).
722. President Donald J. Trump, Statement on Signing an Executive Order on Imposing Certain Sanctions in the Event of Foreign Interference in a United States Election, 2018 Daily Comp. Pres. Doc. 592 (Sept. 12, 2018), https://perma.cc/ BEQ3-T3T3.
723. Tim Hains, *Rep. Adam Schiff: Democrats Meeting Ukrainians ''Different Degree Of Involvement'' Than Trump-Russia*, Real Clear Politics (July 16, 2017), https://perma.cc/D4HC–3ETE.
724. Adam Goldman et al., *Barr Assigns U.S. Attorney in Connecticut to Review Origins of Russia Inquiry*, N.Y. Times (May 13, 2019), https://perma.cc/VS3E-DWT3. The Department of Justice has acknowledged that Mr. Durham's investigation is ''broad in scope and multifaceted'' and is ''intended to illuminate open questions regarding the activities of U.S. and foreign intelligence services as well as non-governmental organizations and individuals.'' *See* Letter from Stephen Boyd, Assistant Attorney General, Dep't of Justice, to Jerrold Nadler, Chairman, House Judiciary Comm. (June 10, 2019).
725. *See* Katie Benner & Adam Goldman, *Justice Dept. Is Said to Open Criminal Inquiry Into Its Own Russia Investigation*, N.Y. Times (Oct. 24, 2019), https://perma.cc/ZR3G-SWHE.
726. Press Release, The White House, Statement from the Press Secretary (May 23, 2019), https://perma.cc/S9LT-LPCM.
727. *See* U.S. Dep't of Justice, Criminal Resource Manual §274.
728. *See* Treaty on Mutual Legal Assistance in Criminal Matters, U.S.-Ukr., July 22, 1998, T.I.A.S. No. 12978.
729. *See* U.S. Dep't of Justice, Criminal Resource Manual §278.
730. *United States* v. *Curtiss-Wright Export Corp.*, 299 U.S. 304, 320 (1936).
731. H.R. Res. 755 art. I.
732. July 25 Call Mem., *infra* Appendix A, at 3.
733. *Id.*
734. *Id.*
735. *Id.*
736. *Id.*
737. Amb. Valeriy Chaly, *Ukraine's Ambassador: Trump's Comments Send Wrong Message to World*, The Hill (Aug. 4, 2016), https://perma.cc/872A-Z28Y; *Ukrainian Efforts to Sabotage Trump Backfire*, *supra* note 565.
738. Letter from Sen. Robert Menendez, et al. to Yuriy Lutsenko, Prosecutor General, Office of the Prosecutor General of Ukraine (May 4, 2019), https://perma.cc/9EH2–LDFG.
739. Vindman Dep. Tr. at 320; *see also* Volker Interview Tr. at 106:9–11 (Burisma ''had a very bad reputation as a company for corruption and money laundering''); Kent Interview Tr. at 88:7 (''Burisma had a poor reputation.'').
740. Oliver Bullough, *The Money Machine: How a High-Profile Corruption Investigation Fell Apart*, The Guardian (Apr. 12, 2017), https://perma.cc/XTF6–DGJ3.

741. Kent Interview Tr. at 88:8–9.

742. Press Release, Burisma Holdings, *Hunter Biden Joins the Team of Burisma Holdings* (May 12, 2014), https://perma.cc/U9YS-JL5G; Adam Entous, *Will Hunter Biden Jeopardize His Father's Campaign?*, The New Yorker (July 1, 2019), https://perma.cc/UJ8G-GRWT (''Hunter joined . . . the Burisma board in April, 2014.'').

743. Susan Crabtree, *Joe Biden Emerges as Obama's Trusty Sidekick*, Wash. Examiner (Apr. 25, 2014), https://perma.cc/KVQ6–V2NF.

744. Approved Judgement of the Central Criminal Court, Serious Fraud Office v. Mykola Zlochevskyi, 1, 7 (Jan. 21, 2015), https://www.justsecurity.org/wp-content/uploads/2019/09/Zlochevsky-SFO-v-MZ-Final-JudgmentRevised.doc.

745. *Biden Faces Conflict of Interest Questions That Are Being Promoted by Trump and Allies*, *supra note* 572.

746. *See The Money Machine: How a High-Profile Corruption Investigation Fell Apart*, *supra* note 740 (''The White House insisted the position was a private matter for Hunter Biden, and unrelated to his father's job, but that is not how anyone I spoke to in Ukraine interpreted it. Hunter Biden is an undistinguished corporate lawyer, with no previous Ukraine experience.''); *Will Hunter Biden Jeopardize His Father's Campaign?*, *supra* note 742.

747. Victoria Thompson, et al., *Exclusive: 'I'm Here': Hunter Biden Hits Back at Trump Taunt in Exclusive ABC News Interview*, ABC News (Oct. 15, 2019), https://abcnews.go.com/Politics/exclusive-hiding-plain-sight-hunter-bidendefends-foreign/story?id=66275416.

748. *Biden Faces Conflict of Interest Questions That Are Being Promoted by Trump and Allies*, *supra* note 572; Polina Ivanova et al., *What Hunter Biden Did on the Board of Ukrainian Energy Company Burisma*, Reuters (Oct. 18, 2019), https://perma.cc/7PL4–JMPY. *Compare Hunter Biden Served as 'Ceremonial Figure' on Burisma Board for $80,000 Per Month*, *supra* note 709 (reporting Hunter Biden's monthly compensation to be $83,333 monthly, or nearly $1 million per year), *with* 2019 Proxy Statement, ConocoPhillips, at 30 (Apr. 1, 2019), https://perma.cc/4GP8–9ZWV (disclosing cash and stock awards provided to each active director with total compensation for the year ranging from $33,125 to $377,779).

749. Vindman Dep. Tr. at 334–35 (explaining that ''it doesn't look like [Hunter Biden] was'' qualified); Volker Interview Tr. at 106:9–12 (speculating that Burisma hired Biden because of his connection to his politically connected father); *see also* Paul Sonne et al., *The Gas Tycoon and the Vice President's Son: The Story of Hunter Biden's Foray into Ukraine*, Wash. Post (Sept. 28, 2019), https://perma.cc/A8VJ-YUY4 (the Executive Director of Ukraine's Anti-Corruption Action Center asserting that Burisma added ''people with these fancy names'' to its board in an effort to ''whitewash[]'' the firm's reputation).

750. *The Gas Tycoon and the Vice President's Son: The Story of Hunter Biden's Foray into Ukraine*, *supra* note 749.

751. *The Money Machine: How a High-Profile Corruption Investigation Fell Apart*, *supra* note 740 (''The credibility of the United States was not helped by the news that . . . Hunter had been on the board of directors of Burisma''); The Editorial Board, *Joe Biden Lectures Ukraine*, N.Y. Times (Dec. 11, 2015), https://perma.cc/P9JH-YEBP (''Sadly, the credibility of Mr. Biden's message may be undermined by the association of his son with a Ukrainian natural-gas company, Burisma Holdings, which is owned by a former government official suspected of corrupt practices.''); Paul Sonne and Laura Mills, *Ukrainians See Conflict in Biden's Anticorruption Message*, Wall St. J. (Dec. 7, 2015), https://www.wsj.com/articles/ukrainians-see-conflict-in-bidens-anticorruption-message–1449523458 (''[A]ctivists here say that [Joe Biden's anti-corruption] message is being undermined as his son receives money from a former Ukrainian official who is being investigated for graft.'').

752. *Hunter Biden's New Job at a Ukrainian Gas Company Is a Problem for U.S. Soft Power*, *supra* note 571.

753. *Will Hunter Biden Jeopardize His Father's Campaign?*, *supra* note 742.

754. Kent Interview Tr. at 227:1–8 (''And when I was on a call with somebody from the Vice President's staff and I cannot recall who it was . . . I raised my concerns that I had heard that Hunter Biden was on the board of a company owned by somebody that the U.S. Government had spent money trying to get tens of millions of dollars back and that could create the perception of a conflict of interest.'').

755. *Impeachment Inquiry: Amb. Marie ''Masha'' Yovanovitch Before the H.R. Permanent Select Comm. on Intelligence*, 116th Cong. 135–36 (Nov. 15, 2019) (Yovanovitch Public Hearing) (''I think that it could raise the appearance of a conflict of interest.''); Taylor-Kent Public Hearing, *supra* note 604, at 25, 94–95 (Kent testifying that ''I raised my concern that Hunter Biden's status as a board member could create the perception of a conflict of interest . . . And my concern was that there was the possibility of a perception of a conflict of interest.''); Williams-Vindman Public Hearing, *supra* note 589, at 129 (Vindman and Williams agreeing ''that Hunter Biden, on the board of Burisma, has the potential for the appearance of a conflict of interest''); Sondland Public Hearing, *supra* note 614, at 171 (''Well, clearly it's an appearance of a conflict.''); Hill-Holmes Public Hearing, *supra* note 636, at 89:20–90:3 (Hill affirming that ''there are perceived conflict of interest troubles when the child of a government official is involved with something that that government official has an official policy role in''); Taylor Dep. Tr. at 90:3–5 (conceding that a reasonable person could say there are perceived conflicts of interest in Hunter Biden's position on Burisma's board).

756. Letter from Lindsey O. Graham, Chairman, S. Comm. on Judiciary, to Michael R. Pompeo, Secretary of State, at 1 (Nov. 21, 2019); *see also* Interfax-Ukraine, *Court Seizes Property of Ex-minister Zlochevsky in Ukraine 09 PGO*, Kyiv Post (Feb. 4, 2016), https://perma.cc/P8RA-TKR6.

757. John Solomon, *The Ukraine Scandal Timeline Democrats and Their Media Allies Don't Want America to See*, John Solomon Reports (Nov. 20, 2019), https://perma.cc/FC8V-P2AG.

758. *Foreign Affairs Issue Launch with Former Vice President Joe Biden*, Council on Foreign Relations (Jan. 23, 2018), https://www.cfr.org/event/foreign-affairs-issue-launch-former-vice-president-joe-biden (''[Y]ou're not getting the billion . . . I looked at them and said: I'm leaving in six hours. If the prosecutor is not fired, you're not getting the money.'').

759. Kent Interview Tr. at 94:21–24.

760. Andrew E. Kramer, *Ukraine Ousts Viktor Shokin, Top Prosecutor, and Political Stability Hangs in the Balance*, N.Y. Times (Mar. 29, 2016), https://perma.cc/J2XH-JUWH.

761. *The Money Machine: How a High-Profile Corruption Investigation Fell Apart*, *supra* note 740.

762. *Attorney John Buretta: In the Case of Burisma and Zlochevskiy I Met with Prosecutor General Yury Lutsenko*, Burisma (Feb. 1, 2017), https://burisma-group.com/eng/media/attorney-john-buretta-in-the-case-of-burisma-and-zlochevskiy-i-met-with-prosecutor-general-yury-lutsenko/.

763. As *Vice President, Biden Said Ukraine Should Increase Gas Production. Then His Son Got a Job with a Ukrainian Gas Company*, *supra* note 573 (''In an email interview with The Post, Shokin [the fired prosecutor] said he believes his ouster was because of his interest in [Burisma]. . . . Had he remained in his post, Shokin said, he would have questioned Hunter Biden.'').

764. July 25 Call Mem., *infra* Appendix A, at 4.

765. *Id.* (emphasis added).

766. *Id.*

767. *See, e.g.*, Louis Nelson, *Sen. Boxer Calls for Probe Into Trump Model Management*, Politico (Sept. 7, 2016), https://perma.cc/8827–CT24; Josh Rogin, *Democrats Ask the FBI to Investigate Trump Advisers' Russia Ties*, Wash. Post (Aug. 30, 2016), https://perma.cc/7HAE-Y2NN.

768. HPSCI Report at 29–30, 38.

769. *See* Letter from Devin Nunes, Ranking Member, H.R. Permanent Select Comm. on Intelligence, to Adam Schiff, Chairman, House Permanent Select Comm. on Intelligence (Nov. 9, 2019); Letter from Doug Collins, Ranking Member, H.R. Comm. on Judiciary, to Jerrold Nadler, Chairman, H.R. Comm. on Judiciary (Dec. 6, 2019).

770. *See, e.g.*, Madeline Conway, *Schiff: There is Now 'More Than Circumstantial Evidence' of Trump-Russia Collusion*, Politico (Mar. 22, 2017), https://perma.cc/U9R4–MQVS.

771. '' 'Duplicity' is the joining of two or more distinct and separate offenses in a single count''; '' '[m]ultiplicity' is charging a single offense in several counts.'' 1A Charles Alan Wright et al., *Federal Practice and Procedure* §142 (4th ed. 2019); *see, e.g., United States* v. *Root*, 585 F.3d 145, 150 (3d Cir. 2009); *United States* v. *Chrane*, 529 F.2d 1236, 1237 n.3 (5th Cir. 1976).

772. U.S. Const. art. I, §3, cl. 6.

773. President Clinton was charged in one article of providing perjurious, false and misleading testimony on any ''one or more'' of four topics and in another article of obstruction through ''one or more'' of seven discrete ''acts'' that involved different behavior in different months with different persons. H.R. Res. 611, 105th Cong. (Dec. 19, 1998); *see Proceedings of the U.S. Senate in the Impeachment Trial of President William Jefferson Clinton*, 106th Cong., vol. I at 472–75 (1999) (*Clinton Senate Trial*) (Trial Mem. of President Clinton).

774. *Id.*, vol. IV at 2745 (statement of Sen. Carl Levin).

775. *Id.*

776. *Id.* at 2655 (statement of Sen. Charles Robb).

777. *Id.*

778. *Id.*, vol. II at 1875–76 (statement of Sen. Chris Dodd).

779. *Proceedings in the Trial of Andrew Johnson, President of the United States, Before the U.S. Senate, on Articles of Impeachment*, 40th Cong. 6 (1868).

780. *Id.* at 1073–75 (statement of Sen. John Henderson).

781. *Id.* at 912 (statement of Sen. Garrett Davis).

782. *Proceedings of the U.S. Senate in the Impeachment Trial of Walter L. Nixon, Jr., a Judge of the U.S. District Court for the Southern District of Mississippi*, 101st Cong., 1st Sess. 464 (1989) (*Judge Nixon Senate Trial*) (statement of Sen. Frank Murkowski); H.R. Rep. No. 101–36, 101st Cong. 656 (1989).

783. *Judge Nixon Senate Trial*, *supra* note 782, at 449 (statement of Sen. Herbert Kohl). The Senate similarly refused to convict Judge Louderback on an omnibus article. In that case, Senator Josiah Bailey asserted that the article ''ought not to have been considered'' at all. *Proceedings of the U.S. Senate in the Trial of Impeachment of Harold Louderback, U.S. District Judge for the Northern District of*

California, 73d Cong., 839–40 (1933) (statement of Sen. Josiah Bailey).

Although the Senate has convicted a few lower court judges on duplicitous articles, those convictions provide no precedent to follow here. *First*, no duplicity objection appears to have been timely raised in those cases before the votes on conviction, and thus the Senate never squarely faced and decided the issue. *See, e.g.*, 80 Cong. Rec. 5606 (1936) (parliamentary inquiry based on duplicity raised only by a Senator after Judge Ritter was convicted).

Second, far from being examples to follow, these judges' convictions only illustrate the constitutional danger of umbrella charges, which allow the form of the articles chosen by the House, rather than actual guilt or innocence, to determine conviction. Judge Ritter, for example, was charged with discrete impeachable acts in separate articles, with a catch-all article combining all of the prior articles tacked on. He was acquitted on each separate article, but convicted on the catch-all article that amounted to a charge of ''general misbehavior.'' *Id*. at 5202–06.

Third, that the Senate may have convicted a few lower court judges on duplicitous articles is hardly precedent to be followed in a presidential impeachment. *See supra* Standards Part B.3.

784. H.R. Res. 755 art. I.

785. H.R. Res. 755 art. II.

786. *Rules of Procedure and Practice in the Senate when Sitting on Impeachment Trials*, Rule XXIII (''An article of impeachment shall not be divisible for the purpose of voting thereon at any time during the trial.''). The committee report accompanying this rule made clear that the ''more familiar'' practice was to ''embod[y] an impeachable offense in an individual article'' rather than relying on broad, potentially duplicitous articles. *Amending the Rules of Procedure and Practice in the Senate When Sitting on Impeachment Trials*, Report of the Comm. on Rules and Admin., S. Rep. No. 99–401, 99th Cong., 8 (1986).

787. The Federalist No. 65, at 400 (Alexander Hamilton) (Clinton Rossiter ed., 1961).

APPENDIX A

MEMORANDUM OF JULY 25, 2019 TELEPHONE CONVERSATION BETWEEN PRESIDENT TRUMP AND PRESIDENT ZELENSKYY

MEMORANDUM OF TELEPHONE CONVERSATION

Subject: Telephone Conversation with President Zelensky of Ukraine.

Participants: President Zelensky of Ukraine. Notetakers: The White House Situation Room.

Date, Time and Place: July 25, 2019, 9:03–9:33 a.m. EDT, Residence.

The President: Congratulations on a great victory. We all watched from the United States and you did a terrific job. The way you came from behind, somebody who wasn't given much of a chance, and you ended up winning easily. It's a fantastic achievement. Congratulations.

President Zelensky : You are absolutely right Mr . President. We did win big and we worked hard for this. We worked a lot but I would like to confess to you that I had an opportunity to learn from you. We used quite a few of your skills and knowledge and were able to use it as an example for our elections and yes it is true that these were unique elections. We were in a unique situation that we were able to achieve a unique success. I'm able to tell you the following; the first time, you called me to congratulate me when I won my presidential election, and the second time you are now calling me when my party won the parliamentary election. I think I should run more often so you can call me more often and we can talk over the phone more often.

The President: [laughter] That's a very good idea. I think your country is very happy about that.

President Zelensky: Well yes, to tell you the truth, we are trying to work hard because we wanted to drain the swamp here in our country. We brought in many many new people. Not the old politicians, not the typical politicians, because we want to have a new format and a new type of government. You are a great teacher for us and in that.

The President: Well it's very nice of you to say that. I will say that we do a lot for Ukraine. We spend a lot of effort and a lot of time. Much more than the European countries are doing and they should be helping you more than they are. Germany does almost nothing for you. All they do is talk and I think it's something that you should really ask them about. When I was speaking to Angela Merkel she talks Ukraine, but she doesn't do anything. A lot of the European countries are the same way so I think it's something you want to look at but the United States has been very very good to Ukraine. I wouldn't say that it's reciprocal necessarily because things are happening that are not good but the United States has been very very good to Ukrane.

President Zelensky: Yes you are absolutely right. Not only 100%, but actually 1000% and I can tell you the following; I did talk to Angela Merkel and I did meet with her. I also met and talked with Macron and I told them that they are not doing quite as much as they need to be doing on the issues with the sanctions. They are not enforcing the sanctions. They are not working as much as they should work for Ukraine. It turns out that even though logically, the European Union should be our biggest partner but technically the United States is a much bigger partner than the European Union and I'm very grateful to you for that because the United States is doing quite a lot for Ukraine. Much more than the European Union especially when we are talking about sanctions against the Russian Federation. I would also like to thank you for your great support in the area of defense. We are ready to continue to cooperate for the next steps specifically we are almost ready to buy more Javelins from the United States for defense purposes.

CAUTION: A Memorandum of a Telephone Conversation (TELCON) is not a verbatim transcript of a discussion. The text in this document records the notes and recollections of Situation Room Duty Officers and NSC policy staff assigned to listen and memorialize the conversation in written form as the conversation takes place. A number of factors can affect the accuracy of the record, including poor telecommunications connections and variations in accent and/or interpretation. The word ''inaudible'' is used to indicate portions of a conversation that the notetaker was unable to hear.

The President: I would like you to do us a favor though because our country has been through a lot and Ukraine knows a lot about it. I would like you to find out what happened with this whole situation with Ukraine, they say Crowdstrike. . . I guess you have one of your wealthy people. . . The server, they say Ukraine has it. There are a lot of things that went on, the whole situation. I think you're surrounding yourself with some of the same people. I would like to have the Attorney General call you or your people and I would like you to get to the bottom of it As you saw yesterday, that whole nonsense ended with a very poor performance by a man named Robert Mueller, an incompetent performance, but they say a lot of it started with Ukraine. Whatever you can do, it's very important that you do it if that's possible.

President Zelensky: Yes it is very important for me and everything that you just mentioned earlier. For me as a President, it is very important and we are open for any future cooperation. We are ready to open a new page on cooperation in relations between the United States and Ukraine. For that purpose, I just recalled our ambassador from United States and he will be replaced by a very competent and very experienced ambassador who will work hard on making sure that our two nations are getting closer. I would also like and hope to see him having your trust and your confidence and have personal relatives with you so we can cooperate even more so. I will personally tell you that one of my assistants spoke with Mr. Giuliani just recently and we are hoping very much that Mr. Giuliani will be able to travel to Ukraine and we will meet once he comes to Ukraine. I just wanted to assure you once again that you have nobody but friends around us. I will make sure that I surround myself with he best and most experienced people. I also wanted to tell you that we are friends. We are great friends and you Mr. President have friends in our country so we can continue our strategic partnership. I also plan to surround myself with great people and in addition to that investigation, I guarantee as the President of Ukraine that all the investigations will be done openly and candidly. That I can assure you.

The President: Good because I heard you had a prosecutor who was very good and he was shut down and that's really unfair. A lot of people are talking about that, the way they shut your very good prosecutor down and you had some very bad people involved. Mr. Giuliani is a highly respected man. He was the mayor of New York City, a great mayor, and I would like him to call you. I will ask him to call you along with the Attorney General. Rudy very much knows what's happening and he is a very capable guy. If you could speak to him that would be great. The former ambassador from the United States, the woman, was bad news and the people she was dealing with in the Ukraine were bad news so I just want to let you know that. The other thing. There's a lot of talk about Biden's son, that Biden stopped the prosecution and a lot of people want to find out about that so whatever you can do with the Attorney General would be great. Biden went around bragging that he stopped the prosecution so if you can look into it. . . It sounds horrible to me.

President Zelensky: I wanted to tell you about the prosecutor. First of all I understand and I'm knowledgeable about the situation. Since we have won the absolute majority in our Parliament, the next prosecutor general will be 100% my person, my candidate, who will be approved by the parliament and will start as a new prosecutor in September. He or she will look into the situation, specifically to the company that you mentioned in this issue. The issue of the investigation of the case is actually the issue of making sure to restore the honesty so we will take care of that and will work on the investigation of the case. On top of that, I would kindly ask you if you have any additional information that you can provide to us, it would be very helpful for the investigation to make sure that we administer justice in our country with regard to the Ambassador to the United States from Ukraine as far as I recall her name was Ivanovich. It was great that you were the first one who told me that she was a bad ambassador because I agree with you 100%. Her attitude towards me was far from the best as she admired the previous President and she was on his side. She would not accept me as a new President well enough.

The President: Well, she's going to go through some things. I will have Mr.

Giuliani give you a call and I am also going to have Attorney General Barr call and we will get to the bottom of it. I'm sure you will figure it out. I heard the prosecutor was treated very badly and he was a very fair prosecutor so good luck with everything. Your economy is going to get better and better I predict. You have a lot of assets. It's a great country. I have many Ukrainian friends, their incredible people.

President Zelensky: I would like to tell you that I also have quite a few Ukrainian friends that live in the United States. Actually last time I traveled to the United States, I stayed in New York near Central Park and I stayed at the Trump Tower. I will talk to them and I hope to see them again in the future. I also wanted to thank you for your invitation to visit the United States, specifically Washington DC. On the other hand, I also want to ensure you that we will be very serious about the case and will work on the investigation. As to the economy, there is much potential for our two countries and one of the issues that is very important for Ukraine is energy independence. I believe we can be very successful and cooperating on energy independence with United States. We are already working on cooperation. We are buying American oil but I am very hopeful for a future meeting. We will have more time and more opportunities to discuss these opportunities and get to know each other better. I would like to thank you very much for your support

The President: Good. Well, thank you very much and I appreciate that. I will tell Rudy and Attorney General Barr to call. Thank you. Whenever you would like to come to the White House, feel free to call. Give us a date and we'll work that out. I look forward to seeing you.

President Zelensky: Thank you very much. I would be very happy to come and would be happy to meet with you personally and get to know you better. I am looking forward to our meeting and I also would like to invite you to visit Ukraine and come to the city of Kyiv which is a beautiful city. We have a beautiful country which would welcome you. On the other hand, I believe that on September 1 we will be in Poland and we can meet in Poland hopefully. After that, it might be a very good idea for you to travel to Ukraine. We can either take my plane and go to Ukraine or we can take your plane, which is probably much better than mine.

The President: Okay, we can work that out. I look forward to seeing you in Washington and maybe in Poland because I think we are going to be there at that time.

President Zelensky: Thank you very much Mr. President.

The President: Congratulations on a fantastic job you've done. The whole world was watching. I'm not sure it was so much of an upset but congratulations.

President Zelensky: Thank you Mr. President bye-bye.

APPENDIX B:

UNAUTHORIZED SUBPOENAS PURPORTEDLY ISSUED PURSUANT TO THE HOUSE'S IMPEACHMENT POWER BEFORE HOUSE RESOLUTION 660

1. Subpoena from Eliot L. Engel to Michael R. Pompeo, Secretary of State (Sept. 27, 2019)
2. Subpoena from Adam B. Schiff to Rudy Giuliani (Nov. 30, 2019)
3. Subpoena from Elijah E. Cummings to John Michael Mulvaney, Acting White House Chief of Staff (Oct. 4, 2019)
4. Subpoena from Adam B. Schiff to Mark T. Esper, Secretary of Defense (Oct. 7, 2019)
5. Subpoena from Adam B. Schiff to Russell T. Vought, Acting Director of OMB (Oct. 7, 2019)
6. Subpoena from Adam B. Schiff to Gordon Sondland, U.S. Ambassador to the European Union (Oct. 8, 2019)
7. Subpoena from Adam B. Schiff to Igor Fruman (Oct. 10, 2019)
8. Subpoena from Adam B. Schiff to Lev Parnas (Oct. 10, 2019)
9. Subpoena from Adam B. Schiff to James Richard Perry, Secretary of Energy (Oct. 10, 2019)
10. Subpoena from Adam B. Schiff to Marie Yovanovitch, former U.S. Ambassador to Ukraine (Oct. 11, 2019)
11. Subpoena from Adam B. Schiff to Fiona Hill, former Senior Director for Russian and European Affairs, National Security Council (Oct. 14, 2019)
12. Subpoena from Adam B. Schiff to George Kent, Deputy Assistant Secretary of State for European and Eurasian Affairs (Oct. 15, 2019)
13. Subpoena from Adam B. Schiff to Dr. Charles Kupperman, former Deputy National Security Advisor (Oct. 21, 2019)
14. Subpoena from Adam B. Schiff to William B. Taylor, Jr., Acting U.S. Ambassador to Ukraine (Oct. 21, 2019)
15. Subpoena from Adam B. Schiff to Laura K. Cooper, Deputy Assistant Secretary of Defense for Russia (Oct. 23, 2019)
16. Subpoena from Adam B. Schiff to Michael Duffey, Associate Director of National Security Programs, OMB (Oct. 24, 2019)
17. Subpoena from Adam B. Schiff to Russell T. Vought, Acting Director of OMB (Oct. 24, 2019)
18. Subpoena from Peter DeFazio to Emily W. Murphy, Administrator of General Services Administration (Oct. 24, 2019)
19. Subpoena from Adam B. Schiff to Ulrich Brechbuhl, Counselor to Secretary of State (Oct. 25, 2019)
20. Subpoena from Adam B. Schiff to Philip Reeker, Acting Assistant Secretary of State of European and Eurasian Affairs (Oct. 26, 2019)
21. Subpoena from Adam B. Schiff to Alexander S. Vindman, Director for European Affairs, National Security Council (Oct. 29, 2019)
22. Subpoena from Adam B. Schiff to Catherine Croft, Special Adviser for Ukraine Negotiations, Department of State (Oct. 30, 2019)
23. Subpoena from Adam B. Schiff to Christopher Anderson, former Special Advisor for Ukraine Negotiations, Department of State (Oct. 30, 2019)

APPENDIX C:

OFFICE OF LEGAL COUNSEL, MEMORANDUM OPINION RE: HOUSE COMMITTEES' AUTHORITY TO INVESTIGATE FOR IMPEACHMENT (JAN. 19, 2019)

U.S. DEPARTMENT OF JUSTICE,
OFFICE OF LEGAL COUNSEL,
Washington, DC, January 19, 2020.

MEMORANDUM FOR PAT A. CIPOLLONE
COUNSEL TO THE PRESIDENT

Re: House Committees' Authority to Investigate for Impeachment

On September 24, 2019, Speaker of the House Nancy Pelosi ''announc[ed]'' at a press conference that ''the House of Representatives is moving forward with an official impeachment inquiry'' into the President's actions and that she was ''directing . . . six Committees to proceed with'' several previously pending ''investigations under that umbrella of impeachment inquiry.''[1] Shortly thereafter, the House Committee on Foreign Affairs issued a subpoena directing the Secretary of State to produce a series of documents related to the recent conduct of diplomacy between the United States and Ukraine. *See* Subpoena of the Committee on Foreign Affairs (Sept. 27, 2019). In an accompanying letter, three committee chairmen stated that their committees jointly sought these documents, not in connection with legislative oversight, but ''[p]ursuant to the House of Representatives' impeachment inquiry.''[2] In the following days, the committees issued subpoenas to the Acting White House Chief of Staff, the Secretary of Defense, the Secretary of Energy, and several others within the Executive Branch.

Upon the issuance of these subpoenas, you asked whether these committees could compel the production of documents and testimony in furtherance of an asserted impeachment inquiry. We advised that the committees lacked such authority because, at the time the subpoenas were issued, the House had not adopted any resolution authorizing the committees to conduct an impeachment inquiry. The Constitution vests the ''sole Power of Impeachment'' in the House of Representatives. U.S. Const. art. I, §2, cl. 5. For precisely that reason, the House itself must authorize an impeachment inquiry, as it has done in virtually every prior impeachment investigation in our Nation's history, including every one involving a President. A congressional committee's ''right to exact testimony and to call for the production of documents'' is limited by the ''controlling charter'' the committee has received from the House. *United States v. Rumely*, 345 U.S. 41, 44 (1953). Yet the House, by its rules, has authorized its committees to issue subpoenas only for matters within their *legislative* jurisdiction. Accordingly, no committee may undertake the momentous move from legislative oversight to impeachment without a delegation by the full House of such authority.

We are not the first to reach this conclusion. This was the position of the House in the impeachments of Presidents Nixon and Clinton. In the case of President Nixon, following a preliminary inquiry, the House adopted a formal resolution as a ''necessary step'' to confer the ''investigative powers'' of the House ''to their full extent'' upon the Judiciary Committee. 120 Cong. Rec. 2350–51 (1974) (statement of Rep. Rodino); *see* H.R. Res. 803, 93d Cong. (1974). As the House Parliamentarian explained, it had been ''considered necessary for the House to specifically vest the Committee on the Judiciary with the investigatory and subpena power to conduct the impeachment investigation.'' 3 Lewis Deschler, *Deschler's Precedents of the United States House of Representatives* ch. 14, §5.2, at 2172 (1994) (Parliamentarian's Note).[3] The House followed the same course in the impeachment of President Clinton. After reviewing the Independent Counsel's referral, the Judiciary Committee ''decided that it must receive authorization from the full House before proceeding on any further course of action.'' H.R. Rep. No. 105–795, at 24 (1998). The House again adopted a resolution authorizing the committee to issue compulsory process in support of an impeachment investigation. *See* H.R. Res. 581, 105th Cong. (1998). As Representative John Conyers summarized in 2016: ''According to parliamentarians of the House past and present, the impeachment process does not begin until the House actually votes to authorize [a] Committee to investigate the charges.''[4]

In marked contrast with these historical precedents, in the weeks after the Speaker's announcement, House committees issued subpoenas without any House vote authorizing them to exercise the House's authority under the Impeachment Clause. The three committees justified the subpoenas based upon the Rules of the House, which authorize subpoenas for matters within a committee's jurisdiction. But the Rules assign only ''legislative jurisdiction[]'' and ''oversight responsibilities'' to the committees. H.R. Rules, 116th Cong., Rule X, cl. 1 (Jan. 11, 2019) (''Committees and their legislative jurisdictions''), cl. 2 (''General oversight responsibilities''); *see also* H.R. Rule X, cls.

3(m), 11. The House's legislative power is distinct from its impeachment power. *Compare* U.S. Const. art. I. §1, *with id.* art. I, §2, cl. 5. Although committees had that same delegation during the Clinton impeachment and a materially similar one during the Nixon impeachment, the House determined on both occasions that the Judiciary Committee required a resolution to investigate. Speaker Pelosi purported to direct the committees to conduct an ''official impeachment inquiry,'' but the House Rules do not give the Speaker any authority to delegate investigative power. The committees thus had no delegation authorizing them to issue subpoenas pursuant to the House's impeachment power.

In the face of objections to the validity of the committee subpoenas that were expressed by the Administration, by ranking minority members in the House, and by many Senators, among others, on October 31, 2019, the House adopted Resolution 660, which ''directed'' six committees ''to continue their ongoing investigations'' as part of the ''existing House of Representatives inquiry into whether sufficient grounds exist'' to impeach President Trump. H.R. Res. 660, 116th Cong. §1 (2019). Resolution 660's direction, however, was entirely prospective. The resolution did not purport to ratify any previously issued subpoenas or even make any mention of them. Accordingly, the pre-October 31 subpoenas, which had not been authorized by the House, continued to lack compulsory force.[5]

I.

Since the start of the 116th Congress, some members of Congress have proposed that the House investigate and impeach President Trump. On January 3, 2019, the first day of the new Congress, Representative Brad Sherman introduced a resolution to impeach ''Donald John Trump, President of the United States, for high crimes and misdemeanors.'' H.R. Res. 13, 116th Cong. (2019). The Sherman resolution called for impeachment based upon the President's firing of the Director of the Federal Bureau of Investigation, James Comey. *See id.* Consistent with settled practice, the resolution was referred to the Judiciary Committee. *See* H.R. Doc. No. 115–177, *Jefferson's Manual* §605, at 324 (2019).

The Judiciary Committee did not act on the Sherman resolution, but it soon began an oversight investigation into related subjects that were also the focus of a Department of Justice investigation by Special Counsel Robert S. Mueller, III. On March 4, 2019, the committee served document requests on the White House and 80 other agencies, entities, and individuals, ''unveil[ing] an investigation . . . into the alleged obstruction of justice, public corruption, and other abuses of power by President Trump, his associates, and members of his Administration.''[6] Those document requests did not mention impeachment.

After the Special Counsel finished his investigation, the Judiciary Committee demanded his investigative files, describing its request as an exercise of legislative oversight authority. *See* Letter for William P. Barr, Attorney General, from Jerrold Nadler, Chairman, Committee on the Judiciary, U.S. House of Representatives at 3 (May 3, 2019) (asserting that ''[t]he Committee has ample jurisdiction under House Rule X(*l*) to conduct oversight of the Department [of Justice], undertake necessary investigations, and consider legislation regarding the federal obstruction of justice statutes, campaign-related crimes, and special counsel investigations, among other things''). The committee's subsequent letters and public statements likewise described its inquiry as serving a ''legislative purpose.'' *E.g.*, Letter for Pat Cipollone, White House Counsel, from Jerrold Nadler, Chairman, Committee on the Judiciary, U.S. House of Representatives at 3–6 (May 16, 2019) (describing the ''legislative purpose of the Committee's investigation'' (capitalization altered)).

Over time, the Judiciary Committee expanded the description of its investigation to claim that it was considering impeachment. The committee first mentioned impeachment in a May 8, 2019 report recommending that the Attorney General be held in contempt of Congress. In a section entitled ''Authority and Legislative Purpose,'' the committee stated that one purpose of the inquiry was to determine ''whether to approve articles of impeachment with respect to the President or any other Administration official.'' H.R. Rep. No. 116–105, at 12, 13 (2019).[7]

The committee formally claimed to be investigating impeachment when it petitioned the U.S. District Court for the District of Columbia to release grand-jury information related to the Special Counsel's investigation. *See* Application at 1–2, *In re Application of the Comm. on the Judiciary, U.S. House of Reps.*, No. 19–gj–48 (D.D.C. July 26, 2019); *see also* Memorandum for Members of the Committee on the Judiciary from Jerrold Nadler, Chairman, *Re: Lessons from the Mueller Report, Part III: ''Constitutional Processes for Addressing Presidential Misconduct''* at 3 (July 11, 2019) (advising that the Committee would seek documents and testimony ''to determine whether the Committee should recommend articles of impeachment against the President or any other Article I remedies, and if so, in what form'').[8] The committee advanced the same contention when asking the district court to compel testimony before the committee by former White House Counsel Donald McGahn. *See* Compl. for Declaratory and Injunctive Relief 1, *Comm. on the Judiciary, U.S. House of Reps.* v. *McGahn*, No. 19–cv–2379 (D.D.C. Aug. 7, 2019) (contending that the Judiciary Committee was ''now determining whether to recommend articles of impeachment against the President based on the obstructive conduct described by the Special Counsel'').

In connection with this litigation, Chairman Nadler described the committee as conducting ''formal impeachment proceedings.'' David Priess & Margaret Taylor, *What if the House Held Impeachment Proceedings and Nobody Noticed?*, Lawfare (Aug. 12, 2019), www.lawfareblog.com/what-if-house-held-impeachment-proceedings-and-nobody-noticed (chronicling the evolution in Chairman Nadler's descriptions of the investigation). Those assertions coincided with media reports that Chairman Nadler had privately asked Speaker Pelosi to support the opening of an impeachment inquiry. *See, e.g.*, Andrew Desiderio, *Nadler: 'This is Formal Impeachment Proceedings,'* Politico (Aug. 8, 2019), www.politico.com/story/2019/08/ 08/nadler-this-is-formal-impeachment-proceedings–1454360 (noting that Nadler ''has privately pushed Speaker Nancy Pelosi to support a formal inquiry of whether to remove the president from office''). On September 12, the Judiciary Committee approved a resolution describing its investigation as an impeachment inquiry and adopting certain procedures for the investigation. *See* Resolution for Investigative Procedures Offered by Chairman Jerrold Nadler, H. Comm. on the Judiciary, 116th Cong. (Sept. 12, 2019), docs.house.gov/meetings/JU/JU00/20190912/ 109921/BILLS-116pih-ResolutionforInvestigative Procedures.pdf.

Speaker Pelosi did not endorse the Judiciary Committee's characterization of its investigation during the summer of 2019. But she later purported to announce a formal impeachment inquiry in connection with a separate matter arising out of a complaint filed with the Inspector General of the Intelligence Community. The complaint, cast in the form of an unsigned letter to the congressional intelligence committees, alleged that, in a July 25, 2019 telephone call, the President sought to pressure Ukrainian President Volodymyr Zelensky to investigate the prior activities of one of the President's potential political rivals. *See* Letter for Richard Burr, Chairman, Select Committee on Intelligence, U.S. Senate, and Adam Schiff, Chairman, Permanent Select Committee on Intelligence, U.S. House of Representatives at 2–3 (Aug. 12, 2019). After the Inspector General reported the existence of the complaint to the intelligence committees, the President declassified the official record of the July 25 telephone call and the complaint, and they were publicly released on September 25 and 26, respectively.

On September 24, the day before the release of the call record, Speaker Pelosi ''announc[ed]'' that ''the House of Representatives is moving forward with an official impeachment inquiry'' and that she was ''direct[ing] . . . six [c]ommittees to proceed with their investigations under that umbrella of impeachment inquiry.'' Pelosi Press Release, *supra* note 1. In an October 8, 2019 court hearing, the House's General Counsel invoked the Speaker's announcement as purportedly conclusive proof that the House had opened an impeachment inquiry. Tr. of Mot. Hrg. at 23, *In re Application of the Comm. on the Judiciary* (''We are in an impeachment inquiry, an impeachment investigation, a formal impeachment investigation because the House says it is. The speaker of the House has specifically said that it is.'').

On September 27, Chairman Engel of the Foreign Affairs Committee issued a subpoena to Secretary of State Pompeo ''[p]ursuant to the House of Representatives' impeachment inquiry.'' Three Chairmen's Letter, *supra* note 2, at 1. That subpoena was the first to rely on the newly proclaimed ''impeachment inquiry.'' A number of subpoenas followed, each of which was accompanied by a letter signed by the chairmen of three committees (Foreign Affairs, Oversight and Reform, and the Permanent Select Committee on Intelligence (''HPSCI'')). Although the September 27 letter mentioned only the ''impeachment inquiry'' as a basis for the accompanying subpoena, subsequent letters claimed that other subpoenas were issued both ''[p]ursuant to the House of Representatives' impeachment inquiry'' and ''in exercise of'' the committees' ''oversight and legislative jurisdiction.''[9]

Following service of these subpoenas, you and other officials within the Executive Branch requested our advice with respect to the obligations of the subpoenas' recipients. We advised that the subpoenas were invalid because, among other reasons, the committees lacked the authority to conduct the purported inquiry and, with respect to several testimonial subpoenas, the committees impermissibly sought to exclude agency counsel from scheduled depositions. In reliance upon that advice, you and other responsible officials directed employees within their respective departments and agencies not to provide the documents and testimony requested under those subpoenas.

On October 8, 2019, you sent a letter to Speaker Pelosi and the three chairmen advising them that their purported impeachment inquiry was ''constitutionally invalid'' because the House had not authorized it.[10] The House Minority Leader, Kevin McCarthy, and the Ranking Member of the Judiciary Committee, Doug Collins, had already made the same objection.[11] Senator Lindsey Graham introduced a resolution in the Senate, co-sponsored by 49 other Senators, which objected to the House's impeachment

process because it had not been authorized by the full House and did not provide the President with the procedural protections enjoyed in past impeachment inquiries. S. Res. 378, 116th Cong. (2019).

On October 25, 2019, the U.S. District Court for the District of Columbia granted the Judiciary Committee's request for grand-jury information from the Special Counsel's investigation, holding that the committee was conducting an impeachment inquiry that was ''preliminar[y] to . . . a judicial proceeding,'' for purposes of the exception to grand-jury secrecy in Rule 6(e)(3)(E)(i) of the Federal Rules of Criminal Procedure. *See In re Application of the Comm. on the Judiciary, U.S. House of Reps.*, No. 19–gj–48, 2019 WL 5485221 (D.D.C. Oct. 25, 2019), *stay granted*, No. 19–5288 (D.C. Cir. Oct. 29, 2019), *argued* (D.C. Cir. Jan. 3, 2020). In so holding, the court concluded that the House need not adopt a resolution before a committee may begin an impeachment inquiry. *Id.* at *26–28. As we discuss below, the district court's analysis of this point relied on a misreading of the historical record.

Faced with continuing objections from the Administration and members of Congress to the validity of the impeachment-related subpoenas, the House decided to take a formal vote to authorize the impeachment inquiry. *See* Letter for Democratic Members of the House from Nancy Pelosi, Speaker of the House (Oct. 28, 2019). On October 31, the House adopted a resolution ''direct[ing]'' several committees ''to continue their ongoing investigations as part of the existing House of Representatives inquiry into whether sufficient grounds exist for the House of Representatives to exercise its Constitutional power to impeach Donald John Trump, President of the United States of America.'' Resolution 660, §1. The resolution also adopted special procedures for impeachment proceedings before HPSCI and the Judiciary Committee.

II.

The Constitution vests in the House of Representatives a share of Congress's legislative power and, separately, ''the sole Power of Impeachment.'' U.S. Const. art. I, §1; *id.* art. I, §2, cl. 5. Both the legislative power and the impeachment power include an implied authority to investigate, including by means of compulsory process. But those investigative powers are not interchangeable. The House has broadly delegated to committees its power to investigate for legislative purposes, but it has held impeachment authority more closely, granting authority to conduct particular impeachment investigations only as the need has arisen. The House has followed that approach from the very first impeachment inquiry through dozens more that have followed over the past 200 years, including every inquiry involving a President.

In so doing, the House has recognized the fundamental difference between a legislative oversight investigation and an impeachment investigation. The House does more than simply pick a label when it ''debate[s] and decide[s] when it wishes to shift from legislating to impeaching'' and to authorize a committee to take responsibility for ''the grave and weighty process of impeachment.'' *Trump* v. *Mazars USA, LLP*, 940 F.3d 710, 737, 738 (D.C. Cir. 2019), *cert. granted*, No. 19–715 (Dec. 13, 2019); *see also id.* at 757 (Rao, J., dissenting) (recognizing that ''the Constitution forces the House to take accountability for its actions when investigating the President's misconduct''). Because a legislative investigation seeks ''information respecting the conditions which the legislation is intended to affect or change,'' *McGrain* v. *Daugherty*, 273 U.S. 135, 175 (1927), ''legislative judgments normally depend more on the predicted consequences of proposed legislative actions and their political acceptability, than on precise reconstruction of past events,'' *Senate Select Comm. on Presidential Campaign Activities* v. *Nixon*, 498 F.2d 725, 732 (D.C. Cir. 1974) (en banc). By contrast, an impeachment inquiry must evaluate whether a civil officer did, or did not, commit treason, bribery, or another high crime or misdemeanor, U.S. Const. art. II, §4, and it is more likely than a legislative oversight investigation to call for the reconstruction of past events.

Thus, the House has traditionally marked the shift to an impeachment inquiry by adopting a resolution that authorizes a committee to investigate through court-like procedures differing significantly from those used in routine oversight. *See, e.g.*, *Jefferson's Manual* §606, at 324 (recognizing that, in modern practice, ''the sentiment of committees has been in favor of permitting the accused to explain, present witnesses, cross-examine, and be represented by counsel'' (citations omitted)); *see also* Cong. Research Serv., R45983, *Congressional Access to Information in an Impeachment Investigation* 15 (Oct. 25, 2019) (''[D]uring both the Nixon and Clinton impeachment investigations, the House Judiciary Committee adopted resolutions affording the President and his counsel the right to respond to evidence gathered by the committee, raise objections to testimony, and cross-examine witnesses[.]'').[12] A House resolution authorizing the opening of an impeachment inquiry plays a highly significant role in directing the scope and nature of the constitutional inquest that follows.

Such a resolution does not just reflect traditional practice. It is a constitutionally required step before a committee may exercise compulsory process in aid of the House's ''sole Power of Impeachment.'' U.S. Const. art. I, §2, cl. 5. In this Part, we explain the basis for this conclusion. First, we address the constitutional distinction between the House's power to investigate for legislative purposes and for impeachment purposes. We next explain why an impeachment inquiry must be authorized by the House itself. Finally, we review the historical record, which confirms, across dozens of examples, that the House must specifically authorize committees to conduct impeachment investigations and to issue compulsory process.

A.

The Constitution vests several different powers in the House of Representatives. As one half of Congress, the House shares with the Senate the ''legislative Powers'' granted in the Constitution (U.S. Const. art. I, §1), which include the ability to pass bills (*id.* art. I, §7, cl. 2) and to override presidential vetoes (*id.* art. I, §7, cl. 3) in the process of enacting laws pursuant to Congress's enumerated legislative powers (*e.g.*, *id.* art. I, §8), including the power to appropriate federal funds (*id.* art. I, §9, cl. 7). But the House has other, non-legislative powers. It is, for instance, ''the Judge of the Elections, Returns and Qualifications of its own Members.'' *Id.* art. I, §5, cl. 1. And it has ''the sole Power of Impeachment.'' *Id.* art. I, §2, cl. 5.

The House and Senate do not act in a legislative role in connection with impeachment. The Constitution vests the House with the authority to accuse civil officers of ''Treason, Bribery, or other high Crimes and Misdemeanors'' that warrant removal and disqualification from office. U.S. Const. art. I, §2, cl. 5; *id.* art. I, §3, cl. 7; *id.* art. II, §4. As Alexander Hamilton explained, the members of the House act as ''the inquisitors for the nation.'' *The Federalist* No. 65, at 440 (Jacob E. Cooke ed., 1961). And Senators, in turn, act ''in their judicial character as a court for the trial of impeachments.'' *Id.* at 439; *see also The Federalist* No. 66, at 445–46 (defending the ''partial intermixture'' in the impeachment context of usually separated powers as ''not only proper, but necessary to the mutual defense of the several members of the government, against each other''; noting that dividing ''the right of accusing'' from ''the right of judging'' between ''the two branches of the legislature . . . avoids the inconvenience of making the same persons both accusers and judges''). The House's impeachment authority differs fundamentally in character from its legislative power.

With respect to both its legislative and its impeachment powers, the House has corresponding powers of investigation, which enable it to collect the information necessary for the exercise of those powers. The Supreme Court has explained that ''[t]he power of inquiry—with process to enforce it—is an essential and appropriate auxiliary to the legislative function.'' *McGrain*, 273 U.S. at 174. Thus, in the legislative context, the House's investigative power ''encompasses inquiries concerning the administration of existing laws as well as proposed or possibly needed statutes.'' *Watkins v. United States*, 354 U.S. 178, 187 (1957); *see also Scope of Congressional Oversight and Investigative Power with Respect to the Executive Branch*, 9 Op. O.L.C. 60, 60 (1985) (''Congress may conduct investigations in order to obtain facts pertinent to possible legislation and in order to evaluate the effectiveness of current laws.''). The Court has further recognized that the House also has implied powers to investigate in support of its other powers, including its power of impeachment. *See, e.g.*, *Kilbourn* v. *Thompson*, 103 U.S. 168, 190 (1880); *see also In re Request for Access to Grand Jury Materials*, 833 F.2d 1438, 1445 (11th Cir. 1987) (the House ''holds investigative powers that are ancillary to its impeachment power''); *Mazars USA*, 940 F.3d at 749 (Rao, J., dissenting) (''The House . . . has a separate power to investigate pursuant to impeachment[.]'').

Because the House has different investigative powers, establishing which authority has been delegated has often been necessary in the course of determining the scope of a committee's authority to compel witnesses and testimony. In addressing the scope of the House's investigative powers, all three branches of the federal government have recognized the constitutional distinction between a legislative investigation and an impeachment inquiry.

1.

We begin with the federal courts. In *Kilbourn*, the Supreme Court held that a House committee could not investigate a bankrupt company indebted to the United States because its request exceeded the scope of the legislative power. According to the Court, the committee had employed investigative power to promote the United States' interests as a creditor, rather than for any valid legislative purpose. *See* 103 U.S. at 192–95. At the same time, the Court conceded that ''the whole aspect of the case would have been changed'' if ''any purpose had been avowed to impeach the [S]ecretary'' of the Navy for mishandling the debts of the United States. *Id.* at 193. But, after reviewing the resolution authorizing the actions of the committee, the Court confirmed that the House had not authorized any impeachment inquiry. *Id.*

In a similar vein, the D.C. Circuit distinguished the needs of the House Judiciary Committee, which was conducting an impeachment inquiry into the actions of President Nixon, from those of the Senate Select Committee on Presidential Campaign Activities, whose investigation was premised upon

legislative oversight. *See Senate Select Comm.*, 498 F.2d at 732. The court recognized that the impeachment investigation was rooted in ''an express constitutional source'' and that the House committee's investigative needs differed in kind from the Senate committee's oversight needs. *Id.* In finding that the Senate committee had not demonstrated that President Nixon's audiotapes were ''critical to the performance of its legislative functions,'' the court recognized ''a clear difference between Congress's *legislative* tasks and the responsibility of a grand jury, or *any institution engaged in like functions*,'' such as the House Judiciary Committee, which had ''begun an inquiry into presidential impeachment.'' *Id.* (emphases added).

More recently, the D.C. Circuit acknowledged this same distinction in *Mazars USA*. As the majority opinion explained, ''the Constitution has left to Congress the judgment whether to commence the impeachment process'' and to decide whether the conduct in question is ''better addressed through oversight and legislation than impeachment.'' 940 F.3d at 739. Judge Rao's dissent also recognized the distinction between a legislative oversight investigation and an impeachment inquiry. *See id.* at 757 (''The Framers established a mechanism for Congress to hold even the highest officials accountable, but also required the House to take responsibility for invoking this power.''). Judge Rao disagreed with the majority insofar as she understood Congress's impeachment power to be the sole means for investigating past misconduct by impeachable officers. But both the majority and the dissent agreed with the fundamental proposition that the Constitution distinguishes between investigations pursuant to the House's impeachment authority and those that serve its legislative authority (including oversight).

2.

The Executive Branch similarly has long distinguished between investigations for legislative and for impeachment purposes. In 1796, the House ''[r]esolved'' that President Washington ''be requested to lay before th[e] House a copy of the instructions'' given to John Jay in preparation for his negotiation of a peace settlement with Great Britain. 5 Annals of Cong. 759–62 (1796). Washington refused to comply because the Constitution contemplates that only the Senate, not the House, must consent to a treaty. *See id.* at 760–61. ''It d[id] not occur'' to Washington ''that the inspection of the papers asked for, c[ould] be relative to any purpose under the cognizance of the House of Representatives, *except that of an impeachment*.'' *Id.* at 760 (emphasis added). Because the House's ''resolution ha[d] not expressed'' any purpose of pursuing impeachment, Washington concluded that ''a just regard to the constitution . . . forb[ade] a compliance with [the House's] request'' for documents. *Id.* at 760, 762.

In 1832, President Jackson drew the same line. A select committee of the House had requested that the Secretary of War ''furnish[]'' it ''with a copy'' of an unratified 1830 treaty with the Chickasaw Tribe and ''the journal of the commissioners'' who negotiated it. H.R. Rep. No. 22–488, at 1 (1832). The Secretary conferred with Jackson, who refused to comply with the committee's request on the same ground cited by President Washington: he ''d[id] not perceive that a copy of any part of the incomplete and unratified treaty of 1830, c[ould] be relative to any purpose under the cognizance of the House of Representatives, except that of an impeachment, which the resolution has not expressed.'' *Id.* at 14 (reprinting Letter for Charles A. Wickliffe, Chairman, Committee on Public Lands, U.S. House of Representatives, from Lewis Cass, Secretary of War (Mar. 2, 1832)).

In 1846, another House select committee requested that President Polk account for diplomatic expenditures made in previous administrations by Secretary of State Daniel Webster. Polk refused to disclose information but ''cheerfully admitted'' that the House may have been entitled to such information if it had ''institute[d] an [impeachment] inquiry into the matter.'' Cong. Globe, 29th Cong., 1st Sess. 698 (1846).[13] Notably, he took this position even though some members of Congress had suggested that evidence about the expenditures could support an impeachment of Webster.[14] In these and other instances, the Executive Branch has consistently drawn a distinction between the power of legislative oversight and the power of impeachment. *See Mazars USA*, 940 F.3d at 761–64 (Rao, J., dissenting) (discussing examples from the Buchanan, Grant, Cleveland, Theodore Roosevelt, and Coolidge Administrations).

3.

House members, too, have consistently recognized the difference between a legislative oversight investigation and an impeachment investigation. *See* Alissa M. Dolan et al., Cong. Research Serv., RL30240, *Congressional Oversight Manual* 25 (Dec. 19, 2014) (''A committee's inquiry must have a legislative purpose *or* be conducted pursuant to *some other constitutional power* of Congress, such as the authority . . . to . . . conduct impeachment proceedings.'' (emphases added)); Cong. Research Serv., *Congressional Access to Information in an Impeachment Investigation* at 1 (distinguishing between ''*legislative* investigation[s]'' and ''[m]uch more rare[]'' ''*impeachment* investigation[s]'').

For instance, in 1793, when debating the House's jurisdiction to investigate Secretary of the Treasury Alexander Hamilton, some members argued that the House could not adopt a resolution of investigation into Hamilton's conduct without adopting the ''solemnities and guards'' of an impeachment inquiry. *See, e.g.*, 3 Annals of Cong. 903 (1793) (statement of Rep. Smith); *id.* at 947–48 (statement of Rep. Boudinot) (distinguishing between the House's ''Legislative capacity'' and its role as ''the grand inquest of the Nation''); *see also Mazars USA*, 940 F.3d at 758 (Rao, J., dissenting) (discussing the episode). In 1796, when the House debated whether to request the President's instructions for negotiating the Jay Treaty, Representative Murray concluded that the House could not meddle in treatymaking, but acknowledged that ''the subject would be presented under an aspect very different'' if the resolution's supporters had ''stated the object for which they called for the papers to be an impeachment.'' 5 Annals of Cong. 429–30 (1796).

Similarly, in 1846, a House select committee agreed with President Polk's decision not to turn over requested information regarding State Department expenditures where the House did not act ''with a view to an impeachment.'' H.R. Rep. No. 29–684, at 4 (1846) (noting that four of the committee's five members ''entirely concur with the President of the United States'' in deciding not to ''communicate or make [the requested documents] public, except with a view to an impeachment'' and that ''[n]o dissent from the views of that message was expressed by the House''); *see also Mazars USA*, 940 F.3d at 761 (Rao, J., dissenting). To take another example, in 1879, the House Judiciary Committee distinguished ''[i]nvestigations looking to the impeachment of public officers'' from ''an ordinary investigation for legislative purposes.'' H.R. Rep. No. 45–141, at 2 (1879).

Most significantly, during the impeachments of Presidents Nixon and Clinton, the House Judiciary Committee determined that the House must provide express authorization before any committee may exercise compulsory powers in an impeachment investigation. *See infra* Part II.C.1. Thus, members of the House, like the other branches of government, have squarely recognized the distinction between congressional investigations for impeachment purposes and those for legislative purposes.

B.

Although the House of Representatives has ''the *sole* Power of Impeachment,'' U.S. Const. art. I, §2, cl. 5 (emphasis added), the associated power to conduct an investigation for impeachment purposes may, like the House's other investigative powers, be delegated. The full House may make such a delegation by adopting a resolution in exercise of its authority to determine the rules for its proceedings, *see id.* art. I, §5, cl. 2, and each House has broad discretion in determining the conduct of its own proceedings. *See, e.g.*, *NLRB v. Noel Canning*, 573 U.S. 513, 551–52 (2014); *United States* v. *Ballin*, 144 U.S. 1, 5 (1892); *see also* 1 *Deschler's Precedents* ch. 5, §4, at 305–06. But the House must actually exercise its discretion by making that judgment in the first instance, and its resolution sets the terms of a committee's authority. *See United States v. Rumely*, 345 U.S. 41, 44 (1953). No committee may exercise the House's investigative powers in the absence of such a delegation.

As the Supreme Court has explained in the context of legislative oversight, ''[t]he theory of a committee inquiry is that the committee members are serving as the representatives of the parent assembly in collecting information for a legislative purpose'' and, in such circumstances, committees ''are endowed with the full power of the Congress to compel testimony.'' *Watkins*, 354 U.S. at 200–01. The same is true for impeachment investigations.[15] Thus, Hamilton recognized, the impeachment power involves a trust of such ''delicacy and magnitude'' that it ''deeply concerns the political reputation and existence of every man engaged in the administration of public affairs.'' *The Federalist* No. 65, at 440. The Founders foresaw that an impeachment effort would ''[i]n many cases . . . connect itself with the preexisting factions'' and ''inlist all their animosities, partialities, influence and interest on one side, or on the other.'' *Id.* at 439. As a result, they placed the solemn authority to initiate an impeachment in ''the representatives of the nation themselves.'' *Id.* at 440. In order to entrust one of its committees to investigate for purposes of impeachment, the full House must ''spell out that group's jurisdiction and purpose.'' *Watkins*, 354 U.S. at 201. Otherwise, a House committee controlled by such a faction could launch open-ended and untethered investigations without the sanction of a majority of the House.

Because a committee may exercise the House's investigative powers only when authorized, the committee's actions must be within the scope of a resolution delegating authority from the House to the committee. As the D.C. Circuit recently explained, ''it matters not whether the Constitution would give Congress authority to issue a subpoena if Congress has given the issuing committee no such authority.'' *Mazars USA*, 940 F.3d at 722; *see* Dolan, *Congressional Oversight Manual* at 24 (''Committees of Congress only have the power to inquire into matters within the scope of the authority delegated to them by their parent body.''). In evaluating a committee's authority, the House's resolution ''is the controlling charter of the committee's powers,'' and, therefore, the committee's ''right to exact testimony and to call for the production of documents must be

found in this language.'' *Rumely*, 345 U.S. at 44; *see also Watkins*, 354 U.S. at 201 (''Those instructions are embodied in the authorizing resolution. That document is the committee's charter.''); *id.* at 206 (''Plainly [the House's] committees are restricted to the missions delegated to them . . . . No witness can be compelled to make disclosures on matters outside that area.''); *Exxon Corp.* v. *FTC*, 589 F.2d 582, 592 (D.C. Cir. 1978) (''To issue a valid subpoena, . . . a committee or subcommittee must conform strictly to the resolution establishing its investigatory powers[.]''); *United States* v. *Lamont*, 18 F.R.D. 27, 32 (S.D.N.Y. 1955) (Weinfeld, J.) (''No committee of either the House or Senate, and no Senator and no Representative, is free on its or his own to conduct investigations unless authorized. Thus it must appear that Congress empowered the Committee to act, and further that at the time the witness allegedly defied its authority the Committee was acting within the power granted to it.''). While a committee may study some matters without exercising the investigative powers of the House, a committee's authority to compel the production of documents and testimony depends entirely upon the jurisdiction provided by the terms of the House's delegation.

In *Watkins*, the Supreme Court relied upon those principles to set aside a conviction for contempt of Congress because of the authorizing resolution's vagueness. The uncertain scope of the House's delegation impermissibly created ''a wide gulf between the responsibility for the use of investigative power and the actual exercise of that power.'' 354 U.S. at 205. If the House wished to authorize the exercise of its investigative power, then it needed to take responsibility for the use of that power, because a congressional subpoena, issued with the threat of a criminal contempt citation, necessarily placed ''constitutional liberties'' in ''danger.'' *Id.*

The concerns expressed by the Court in *Watkins* apply with equal, if not greater, force when considering the authority of a House committee to compel the production of documents in connection with investigating impeachment. As John Labovitz, a House impeachment attorney during the Nixon investigation, explained: ''[I]mpeachment investigations, because they involve extraordinary power and (at least where the president is being investigated) may have extraordinary consequences, are not to be undertaken in the same manner as run-of-the-mill legislative investigations. The initiation of a presidential impeachment inquiry should itself require a deliberate decision by the House.'' John R. Labovitz, *Presidential Impeachment* 184 (1978). Because a committee possesses only the authorities that have been delegated to it, a committee may not use compulsory process to investigate impeachment without the formal authorization of the House.

c.

Historical practice confirms that the House must authorize an impeachment inquiry. *See, e.g., Zivotofsky* v. *Kerry*, 135 S. Ct. 2076, 2091 (2015) (recognizing that ''[i]n separation-of-powers cases,'' the Court has placed ''significant weight'' on ''accepted understandings and practice''); *Noel Canning*, 573 U.S. at 514 (same). The House has expressly authorized every impeachment investigation of a President, including by identifying the investigative committee and authorizing the use of compulsory process. The same thing has been true for nearly all impeachment investigations of other executive officials and judges. While committees have sometimes studied a proposed impeachment resolution or reviewed available information without conducting a formal investigation, in nearly every case in which the committee resorted to compulsory process, the House expressly authorized the impeachment investigation. That practice was foreseen as early as 1796. When Washington asked his Cabinet for opinions about how to respond to the House's request for the papers associated with the Jay Treaty, the Secretary of the Treasury, Oliver Wolcott Jr., explained that ''the House of Representatives has no right to demand papers'' outside its legislative function ''[e]xcept when an Impeachment is proposed *& a formal enquiry instituted*.'' Letter for George Washington from Oliver Wolcott Jr. (Mar. 26, 1796), *reprinted in* 19 *The Papers of George Washington: Presidential Series* 611–12 (David R. Hoth ed., 2016) (emphasis added).

From the very first impeachment, the House has recognized that a committee would require a delegation to conduct an impeachment inquiry. In 1797, when House members considered whether a letter contained evidence of criminal misconduct by Senator William Blount, they sought to confirm Blount's handwriting but concluded that the Committee of the Whole did not have the power of taking evidence. *See* 7 Annals of Cong. 456–58 (1797); 3 Asher C. Hinds, *Hinds' Precedents of the House of Representatives of the United States* §2294, at 644–45 (1907). Thus, the committee ''rose,'' and the House itself took testimony. 3 *Hinds' Precedents* §2294, at 646. Two days later, the House appointed a select committee to ''prepare and report articles of impeachment'' and vested in that committee the ''power to send for persons, papers, and records.'' 7 Annals of Cong. at 463–64, 466; 3 *Hinds' Precedents* §2297, at 648.[16] As we discuss in this section, we have identified dozens of other instances where the House, in addition to referring proposed articles of impeachment, authorized formal impeachment investigations.

Against this weighty historical record, which involves nearly 100 authorized impeachment investigations, the outliers are few and far between.[17] In 1879, it appears that a House committee, which was expressly authorized to conduct an oversight investigation into the administration of the U.S. consulate in Shanghai, ultimately investigated and recommended that the former consul-general and former vice consul-general be impeached. In addition, between 1986 and 1989, the Judiciary Committee considered the impeachment of three federal judges who had been criminally prosecuted (two of whom had been convicted). The Judiciary Committee pursued impeachment before there had been any House vote, and issued subpoenas in two of those inquiries. Since then, however, the Judiciary Committee reaffirmed during the impeachment of President Clinton that, in order to conduct an impeachment investigation, it needed an express delegation of investigative authority from the House. And in all subsequent cases the House has hewed to the well-established practice of authorizing each impeachment investigation.

The U.S. District Court for the District of Columbia recently reviewed a handful of historical examples and concluded that House committees may conduct impeachment investigations without a vote of the full House. *See In re Application of the Comm. on the Judiciary*, 2019 WL 5485221, at *26–28. Yet, as the discussion below confirms, the district court misread the lessons of history.[18] The district court treated the House Judiciary Committee's preliminary inquiries in the Clinton and Nixon impeachments as investigations, without recognizing that, in both cases, the committee determined that a full House vote was necessary before it could issue subpoenas. The district court also treated the 1980s judicial inquiries as if they represented a rule of practice, rather than a marked deviation from the dozens of occasions where the House recognized the need to adopt a formal resolution to delegate its investigative authority. As our survey below confirms, the historical practice with respect to Presidents, other executive officers, and judges is consistent with the structure of our Constitution, which requires the House, as the ''sole'' holder of impeachment power, to authorize any impeachment investigation that a committee may conduct on its behalf.

1.

While many Presidents have been the subject of less-formal demands for impeachment, at least eleven have faced resolutions introduced in the House for the purpose of initiating impeachment proceedings.[19] In some cases, the House formally voted to reject opening a presidential impeachment investigation. In 1843, the House rejected a resolution calling for an investigation into the impeachment of President Tyler. *See* Cong. Globe, 27th Cong., 3d Sess. 144–46 (1843). In 1932, the House voted by a wide margin to table a similar resolution introduced against President Hoover. *See* 76 Cong. Rec. 399–402 (1932). In many other cases, the House simply referred impeachment resolutions to the Judiciary Committee, which took no further action before the end of the Congress. But, in three instances before President Trump, the House moved forward with investigating the impeachment of a President.[20] Each of those presidential impeachments advanced to the investigative stage only after the House adopted a resolution expressly authorizing a committee to conduct the investigation. In no case did the committee use compulsory process until the House had expressly authorized the impeachment investigation.

The impeachment investigation of President Andrew Johnson. On January 7, 1867, the House adopted a resolution authorizing the ''Committee on the Judiciary'' to ''inquire into the official conduct of Andrew Johnson . . . and to report to this House whether, in their opinion,'' the President ''has been guilty of any act, or has conspired with others to do acts, which, in contemplation of the Constitution, are high crimes or misdemeanors.'' Cong. Globe, 39th Cong., 2d Sess. 320–21 (1867); *see also* 3 *Hinds' Precedents* §2400, at 824. The resolution conferred upon the committee the ''power to send for persons and papers and to administer the customary oath to witnesses.'' Cong. Globe, 39th Cong., 2d Sess. 320 (1867). The House referred a second resolution to the Judiciary Committee on February 4, 1867. *Id.* at 991; 3 *Hinds' Precedents* §2400, at 824.[21] Shortly before that Congress expired, the committee reported that it had seen ''sufficient testimony . . . to justify and demand a further prosecution of the investigation.'' H.R. Rep. No. 39–31, at 2 (1867). On March 7, 1867, the House in the new Congress adopted a resolution that authorized the committee ''to continue the investigation authorized'' in the January 7 resolution and to ''send for persons and papers'' and administer oaths. Cong. Globe, 40th Cong., 1st Sess. 18, 25 (1867); 3 *Hinds' Precedents* §2401, at 825–26. The committee recommended articles of impeachment, but the House rejected those articles on December 7, 1867. *See* Cong. Globe, 40th Cong., 2d Sess. 67–68 (1867). In early 1868, however, the House adopted resolutions authorizing another investigation, with compulsory powers, by the Committee on Reconstruction and transferred to that committee the evidence from the Judiciary Committee's earlier investigation. *See* Cong. Globe, 40th Cong., 2d Sess. 784–85, 1087 (1868); 3 *Hinds' Precedents* §2408, at 845.

On February 21, 1868, the impeachment effort received new impetus when Johnson removed the Secretary of War without the

Senate's approval, contrary to the terms of the Tenure of Office Act, which Johnson (correctly) held to be an unconstitutional limit on his authority. *See* Cong. Globe, 40th Cong., 2d Sess. 1326–27 (1868); 3 *Hinds' Precedents* §2408–09, at 845–47; *see also Myers v. United States*, 272 U.S. 52, 176 (1926) (finding that provision of the Tenure of Office Act ''was invalid''). That day, the Committee on Reconstruction reported an impeachment resolution to the House, which was debated on February 22 and passed on February 24. Cong. Globe, 40th Cong., 2d Sess. 1400 (1868); 3 *Hinds' Precedents* §§2409–12, at 846–51.

The impeachment investigation of President Nixon. Although many resolutions were introduced in support of President Nixon's impeachment earlier in 1973, the House's formal impeachment inquiry arose in the months following the ''Saturday Night Massacre,'' during which President Nixon caused the termination of Special Prosecutor Archibald Cox at the cost of the resignations of his Attorney General and Deputy Attorney General. *See* Letter Directing the Acting Attorney General to Discharge the Director of the Office of Watergate Special Prosecution Force (Oct. 20, 1973), *Pub. Papers of Pres. Richard Nixon* 891 (1973). Immediately thereafter, House members introduced resolutions calling either for the President's impeachment or for the opening of an investigation.[22] The Speaker of the House referred the resolutions calling for an investigation to the Rules Committee and those calling for impeachment to the Judiciary Committee. *See* Office of Legal Counsel, U.S. Dep't of Justice, *Legal Aspects of Impeachment: An Overview at 40 (Feb. 1974) (''Legal Aspects of Impeachment''); 3 Deschler's Precedents ch. 14, §5, at 2020*.

Following the referrals, the Judiciary Committee ''beg[a]n an inquiry into whether President Nixon ha[d] committed any offenses that could lead to impeachment,'' an exercise that the committee considered ''preliminary.'' Richard L. Madden, *Democrats Agree on House Inquiry into Nixon's Acts*, N.Y. Times, Oct. 23, 1973, at 1. The committee started collecting publicly available materials, and Chairman Peter Rodino Jr. stated that he would ''set up a separate committee staff to 'collate' investigative files from Senate and House committees that have examined a variety of charges against the Nixon Administration.'' James M. Naughton, *Rodino Vows Fair Impeachment Inquiry*, N.Y. Times, Oct. 30, 1973, at 32.

Although the committee ''adopted a resolution permitting Mr. Rodino to issue subpoenas without the consent of the full committee,'' James M. Naughton, *House Panel Starts Inquiry on Impeachment Question*, N.Y. Times, Oct. 31, 1973, at 1, no subpoenas were ever issued under that purported authority. Instead, the committee ''delayed acting'' on the impeachment resolutions. James M. Naughton, *House Unit Looks to Impeachment*, N.Y. Times, Dec. 2, 1973, at 54. By late December, the committee had hired a specialized impeachment staff. *A Hard-Working Legal Adviser: John Michael Doar*, N.Y. Times, Dec. 21, 1973, at 20. The staff continued '''wading through the mass of material already made public,'' and the committee's members began considering ''the areas in which the inquiry should go.'' Bill Kovach, *Vote on Subpoena Could Test House on Impeachment*, N.Y. Times, Jan. 8, 1974, at 14; *see also* Staff of the H. Comm. on the Judiciary, 93d Cong., Rep. on Work of the Impeachment Inquiry Staff as of February 5, 1974, at 2–3 (1974) (noting that the staff was ''first collecting and sifting the evidence available in the public domain,'' then ''marshaling and digesting the evidence available through various governmental investigations''). By January 1974, the committee's actions had consisted of digesting publicly available documents and prior impeachment precedents. That was consistent with the committee's ''only mandate,'' which was to ''study more than a dozen impeachment resolutions submitted'' in 1973. James M. Naughton, *Impeachment Panel Seeks House Mandate for Inquiry*, N.Y. Times, Jan. 25, 1974, at 1.

In January, the committee determined that a formal investigation was necessary, and it requested ''an official House mandate to conduct the inquiry,'' relying upon the ''precedent in each of the earlier [impeachment] inquiries.'' *Id*. at 17. On January 7, Chairman Rodino ''announced that the Committee's subpoena power does not extend to impeachment and that . . . the Committee would seek express authorization to subpoena persons and documents with regard to the impeachment inquiry.'' *Legal Aspects of Impeachment* at 43; *see also* Richard L. Lyons, *GOP Picks Jenner as Counsel*, Wash. Post, Jan. 8, 1974, at A1, A6 (''Rodino said the committee will ask the House when it reconvenes Jan. 21 to give it power to subpoena persons and documents for the inquiry. The committee's subpoena power does not now extend to impeachment proceedings, he said.''). As the House Parliamentarian later explained, the Judiciary Committee's general authority to conduct investigations and issue subpoenas ''did not specifically include impeachments within the jurisdiction of the Committee on the Judiciary,'' and it was therefore ''considered necessary for the House to specifically vest the Committee on the Judiciary with the investigatory and subpena power to conduct the impeachment investigation.'' 3 *Deschler's Precedents* ch. 14, §15.2, at 2172 (Parliamentarian's Note).

On February 6, 1974, the House approved Resolution 803, which ''authorized and directed'' the Judiciary Committee ''to investigate fully and completely whether sufficient grounds exist for the House of Representatives to exercise its constitutional power to impeach Richard M. Nixon, President of the United States of America.'' H.R. Res. 803, 93d Cong. §1. The resolution specifically authorized the committee ''to require . . . by subpena or otherwise . . . the attendance and testimony of any person'' and ''the production of such things'' as the committee ''deem[ed] necessary'' to its investigation. *Id*. §2(a).

Speaking on the House floor, Chairman Rodino described the resolution as a ''necessary step'' to confer the House's investigative powers on the Judiciary Committee:

We have reached the point when it is important that the House explicitly confirm our responsibility under the Constitution.

We are asking the House of Representatives, by this resolution, to authorize and direct the Committee on the Judiciary to investigate the conduct of the President of the United States . . . .

As part of that resolution, we are asking the House to give the Judiciary Committee the power of subpena in its investigations.

Such a resolution has always been passed by the House. . . . It is a necessary step if we are to meet our obligations.

. . . .

. . . The sole power of impeachment carries with it the power to conduct a full and complete investigation of whether sufficient grounds for impeachment exist or do not exist, and *by this resolution these investigative powers are conferred to their full extent upon the Committee on the Judiciary*.

120 Cong. Rec. 2350–51 (1974) (emphases added). During the debate, others recognized that the resolution would delegate the House's investigative powers to the Judiciary Committee. *See, e.g., id*. at 2361 (statement of Rep. Rostenkowski) (''By delegating to the Judiciary Committee the powers contained in this resolution, we will be providing that committee with the resources it needs to inform the whole House of the facts of this case.''); *id*. at 2362 (statement of Rep. Boland) (''House Resolution 803 is intended to delegate to the Committee on the Judiciary the full extent of the powers of this House in an impeachment proceeding[]—both as to the persons and types of things that may be subpenaed and the methods for doing so.''). Only after the Judiciary Committee had received authorization from the House did it request and subpoena tape recordings and documents from President Nixon. *See* H.R. Rep. No. 93–1305, at 187 (1974).[23]

The impeachment investigation of President Clinton. On September 9, 1998, Independent Counsel Kenneth W. Starr, acting under 28 U.S.C. §595(c), advised the House of Representatives that he had uncovered substantial and credible information that he believed could constitute grounds for the impeachment of President Clinton. 18 *Deschler's Precedents* app. at 548–49 (2013). Two days later, the House adopted a resolution that referred the matter, along with Starr's report and 36 boxes of evidence, to the Judiciary Committee. H.R. Res. 525, 105th Cong. (1998). The House directed that committee to review the report and ''determine whether sufficient grounds exist to recommend to the House that an impeachment inquiry be commenced.'' *Id*. §1. The Rules Committee's Chairman emphasized that the House would need to adopt a subsequent resolution if it decided to authorize an impeachment inquiry: ''[T]his resolution does not authorize or direct an impeachment inquiry. . . . It merely provides the appropriate parameters for the Committee on the Judiciary . . . to . . . make a recommendation to the House as to whether we should commence an impeachment inquiry.'' 144 Cong. Rec. 20021 (1998) (statement of Rep. Solomon).

On October 7, 1998, the Judiciary Committee did recommend that there be an investigation for purposes of impeachment. As explained in the accompanying report: ''[T]he Committee decided that *it must receive authorization from the full House before proceeding* on any further course of action. Because impeachment is delegated solely to the House of Representatives by the Constitution, the full House of Representatives should be involved in critical decision making regarding various stages of impeachment.'' H.R. Rep. No. 105–795, at 24 (emphasis added). The committee also observed that ''a resolution authorizing an impeachment inquiry into the conduct of a president is consistent with past practice,'' citing the resolutions for Presidents Johnson and Nixon and observing that ''numerous other inquiries were authorized by the House directly, or by providing investigative authorities, such as deposition authority, to the Committee on the Judiciary.'' *Id*.

The next day, the House voted to authorize the Judiciary Committee to ''investigate fully and completely whether sufficient grounds exist for the House of Representatives to exercise its constitutional power to impeach William Jefferson Clinton, President of the United States of America.'' H.R. Res. 581, 105th Cong. §1 (1998). The resolution authorized the committee ''to require . . . by subpoena or otherwise . . . the attendance and testimony of any person'' and ''the production of . . . things,'' and to require the furnishing of information ''by interrogatory.'' *Id*. §2(a). ''On November 5, 1998,'' as part of its investigation, ''the Committee presented President Clinton with 81 requests for admission,'' which the Committee explained that it ''would have . . . compelled by subpoena'' had President Clinton not complied. H.R. Rep. No. 105–830, at 77, 122

(1998). And the Committee then ''approved the issuance of subpoenas for depositions and materials'' from several witnesses. 144 Cong. Rec. D1210–11 (daily ed. Dec. 17, 1998).

In discussing the Clinton precedent, the district court in *In re Application of the Committee on the Judiciary* treated the D.C. Circuit's approval of the disclosure of Starr's report and associated grand-jury information as evidence that the Judiciary Committee may ''commence an impeachment investigation'' without a House vote. 2019 WL 5485221, at *27 & n.36. But the D.C. Circuit did not authorize that disclosure because of any pending House investigation. It did so because a statutory provision required an independent counsel to ''advise the House of Representatives of any substantial and credible information which such independent counsel receives . . . *that may constitute grounds for an impeachment*.'' 28 U.S.C. §595(c) (emphasis added). And the D.C. Circuit viewed the report as reflecting ''information of the type described in 28 U.S.C. §595(c).'' *In re Madison Guar. Sav. & Loan Ass'n*, Div. No. 94–1 (D.C. Cir. Spec. Div. July 7, 1998), reprinted in H.R. Doc. No. 105–331, pt. 1, at 10 (1998). The order authorizing the transmission of that information to the House did not imply that any committee was conducting an impeachment investigation. To the contrary, after the House received the information, ''no person had access to'' it until after the House adopted a resolution referring the matter to the Judiciary Committee. H.R. Rep. No. 105–795, at 5. And the House then adopted a second resolution (Resolution 581) to authorize a formal investigation. In other words, the House voted to authorize the Judiciary Committee both to review the Starr evidence and to conduct an impeachment investigation. Neither the D.C. Circuit nor the Judiciary Committee suggested that any committee could have taken such action on its own.

2.

The House has historically followed these same procedures in considering impeachment resolutions against executive branch officers other than the President. In many cases, an initial resolution laying out charges of impeachment or authorizing an investigation was referred to a select or standing committee.[24] Following such a referral, the designated committee reviewed the matter and considered whether to pursue a formal impeachment inquiry—it did not treat the referral as stand-alone authorization to conduct an investigation. When a committee concluded that the charges warranted investigation, it reported to the full House, which then considered whether to adopt a resolution to authorize a formal investigation.

For example, in March 1867, the House approved a resolution directing the Committee on Public Expenditures ''to inquire into the conduct of Henry A. Smythe, collector of the port of New York.'' Cong. Globe, 40th Cong., 1st Sess. 132 (1867); *see also id.* (noting that the resolution had been modified following debate ''so as to leave out that part about bringing articles of impeachment''). Weeks later, the House voted to authorize an impeachment investigation. *Id.* at 290 (authorizing the investigating committee to ''send for persons and papers''). The House followed this same procedure in 1916 for U.S. Attorney H. Snowden Marshall. H.R. Res. 90, 64th Cong. (1916) (initial resolution referred to the Judiciary Committee); H.R. Res. 110, 64th Cong. (1916) (resolution approving the investigation contemplated in the initial resolution). And the process repeated in 1922 for Attorney General Harry Daugherty. H.R. Res. 425, 67th Cong. (1922) (referring the initial resolution to the committee); H.R. Res. 461, 67th Cong. (1922) (resolution approving the investigation contemplated in the initial resolution).

In a few instances, the House asked committees to draft articles of impeachment without calling for any additional impeachment investigation. For example, in 1876, after uncovering ''unquestioned evidence of the malfeasance in office by General William W. Belknap'' (who was then Secretary of War) in the course of another investigation, the House approved a resolution charging the Committee on the Judiciary with the responsibility to ''prepare and report without unnecessary delay suitable articles of impeachment.'' 4 Cong. Rec. 1426, 1433 (1876). When a key witness left the country, however, the committee determined that additional investigation was warranted, and it asked to be authorized ''to take further proof'' and ''to send for persons and papers'' in its search for alternative evidence. *Id.* at 1564, 1566; *see also* 3 *Hinds' Precedents* §§2444–45, at 902–04.

In. some cases, the House declined to authorize a committee to investigate impeachment with the aid of compulsory process. In 1873, the House authorized the Judiciary Committee ''to inquire whether anything'' in testimony presented to a different committee implicating Vice President Schuyler Colfax ''warrants articles of impeachment of any officer of the United States not a member of this House, or makes it proper that further investigation should be ordered in his case.'' Cong. Globe, 42d Cong., 3d Sess. 1545 (1873); *see* 3 *Hinds' Precedents* §2510, at 1016–17. No further investigation was authorized. A similar sequence occurred in 1917 in the case of an impeachment resolution offered against members of the Federal Reserve Board. *See* 54 Cong. Rec. 3126–30 (1917) (impeachment resolution); H.R. Rep. No. 64–1628, at 1 (1917) (noting that following the referral of the impeachment resolution, the Committee had reviewed available information and determined that no further proceedings were warranted). In 1932, the House referred to the Judiciary Committee a resolution calling for the investigation of the possible impeachment of Secretary of the Treasury Andrew Mellon. H.R. Res. 92, 72d Cong. (1932); *see also* 3 *Deschler's Precedents* ch. 14, §14.1, at 2134–39. The following month, the House approved a resolution discontinuing any investigation of the charges. 75 Cong. Rec. 3850 (1932); *see also* 3 *Deschler's Precedents* ch. 14, §14.2, at 2139–40.

Most recently, in the 114th Congress, the House referred to the Judiciary Committee resolutions concerning the impeachment of the Commissioner of the Internal Revenue Service, John Koskinen. *See* H.R. Res. 494, 114th Cong. (2015); H.R. Res. 828, 114th Cong. (2016). Shortly after an attempt to force a floor vote on one of the resolutions, Koskinen voluntarily appeared before the committee at a hearing. *See Impeachment Articles Referred on John Koskinen (Part III): Hearing Before the H. Comm. on the Judiciary*, 114th Cong. 2 (2016). The ranking minority member, Representative John Conyers, observed that, despite the title, ''this is not an impeachment hearing'' because, ''[a]ccording to parliamentarians of the House past and present, the impeachment process does not begin until the House actually votes to authorize this Committee to investigate the charges.'' *Id.* at 3; *see also id.* at 30 (similar statement by Rep. Johnson). During the hearing, Commissioner Koskinen offered to provide a list of supporting witnesses who could be cross-examined ''if the Committee decided it wanted to go to a full-scale impeachment process, which I understand this is not.'' *Id.* at 45. Two months later, one of the impeachment resolutions was briefly addressed on the floor of the House, and again referred to the Judiciary Committee, but without providing any investigative authority. *See* 162 Cong. Rec. H7251–54 (daily ed. Dec. 6, 2016). The committee never sought to compel the appearance of Koskinen or any other witness, and the committee does not appear to have taken any further action before the Congress expired.

In his 1978 book on presidential impeachment, former House impeachment attorney John Labovitz observed that there were a ''few exceptions,'' ''mostly in the 1860s and 1870s,'' to the general rule that ''past impeachment investigations ha[ve] been authorized by a specific resolution conferring subpoena power.'' Labovitz, *Presidential Impeachment* at 182 & n.18. In our review of the history, we have identified one case from that era where a House committee commenced a legislative oversight investigation and subsequently moved, without separate authorization, to consider impeachment.[25] But the overwhelming historical practice to the contrary confirms the Judiciary Committee's well-considered conclusions in 1974 and 1998 that a committee requires specific authorization from the House before it may use compulsory process to investigate for impeachment purposes.

3.

The House has followed the same practice in connection with nearly all impeachment investigations involving federal judges. Committees sometimes studied initial referrals, but they waited for authorization from the full House before conducting any formal impeachment investigation. Three cases from the late 1980s departed from that pattern, but the House has returned during the past three decades to the historical baseline, repeatedly ensuring that the Judiciary Committee had a proper delegation for each impeachment investigation.

The practice of having the House authorize each specific impeachment inquiry is reflected in the earliest impeachment investigations involving judges. In 1804, the House considered proposals to impeach two judges: Samuel Chase, an associate justice of the Supreme Court, and Richard Peters, a district judge. *See* 3 *Hinds' Precedents* §2342, at 711–16. There was a ''lengthy debate'' about whether the evidence was appropriate to warrant the institution of an inquiry. *Id.* at 712. The House then adopted a resolution appointing a select committee ''to inquire into the official conduct'' of Chase and Peters ''and to report'' the committee's ''opinion whether'' either of the judges had ''so acted, in their judicial capacity, as to require the interposition of the constitutional power of this House.'' 13 Annals of Cong. 850, 875–76 (1804); 3 *Hinds' Precedents* §2342, at 715. A few days later, another resolution ''authorized'' the committee ''to send for persons, papers, and records.'' 13 Annals of Cong. at 877; *see also* 3 *Hinds' Precedents* §2342, at 715. At the conclusion of its investigation, the committee recommended that Chase, but not Peters, be impeached. 3 *Hinds' Precedents* §2343, at 716. The House thereafter agreed to a resolution impeaching Chase. *Id.* at 717. Congress recessed before the Senate could act, but, during the next Congress, the House appointed an almost identical select committee, which was ''given no power of investigation.'' *Id.* §§2343 0944, at 717–18. The committee recommended revised articles of impeachment against Chase, which were again adopted by the House. *Id.* §2344, at 718–19. In 1808, the House again separately authorized an investigation when it considered whether Peter Bruin, a Mississippi territorial judge, should be impeached for ''neglect of duty and drunkenness on the bench.'' *Id.* §2487, at 983–84. A member of the House objected ''that it would hardly be dignified for the Congress to proceed to an impeachment'' based on the territorial legislature's referral and proposed the

appointment of a committee ''to inquire into the propriety of impeaching.'' *Id.* at 984; *see* 18 Annals of Cong. 2069 (1808). The House then passed a resolution forming a committee to conduct an inquiry, which included the ''power to send for persons, papers, and records'' but, like most inquiries to follow, did not result in impeachment. 18 Annals of Cong. at 2189; 3 *Hinds' Precedents* §2487, at 984.

Over the course of more than two centuries thereafter, members of the House introduced resolutions to impeach, or to investigate for potential impeachment, dozens more federal judges, and the House continued, virtually without exception, to provide an express authorization before any committee proceeded to exercise investigative powers.[26] In one 1874 case, the Judiciary Committee realized only after witnesses had traveled from Arkansas that it could not find any resolution granting it compulsory powers to investigate previously referred charges against Judge William Story. *See* 2 Cong. Rec. 1825, 3438 (1874); 3 *Hinds' Precedents* §2513, at 1023. In order to ''cure'' that ''defect,'' the committee reported a privileged resolution to the floor of the House that would grant the committee ''power to send for persons and papers'' as part of the impeachment investigation. 2 Cong. Rec. at 3438. The House promptly agreed to the resolution, enabling the committee to ''examine'' the witnesses that day. *Id.*

In other cases, however, no full investigation ever materialized. In 1803, John Pickering, a district judge, was impeached, but the House voted to impeach him without conducting any investigation at all, relying instead upon documents supplied by President Jefferson. *See* 3 *Hinds' Precedents* §2319, at 681–82; *see also* Lynn W. Turner, *The Impeachment of John Pickering*, 54 Am. Hist. Rev. 485, 491 (1949). Sometimes, the House authorized only a preliminary inquiry to determine whether an investigation would be warranted. In 1908, for instance, the House asked the Judiciary Committee to consider proposed articles impeaching Judge Lebbeus Wilfley of the U.S. Court for China. In the ensuing hearing, the Representative who had introduced the resolution acknowledged that the committee was not ''authorized to subpoena witnesses'' and had been authorized to conduct only ''a preliminary examination,'' which was ''not like an investigation ordinarily held by the House,'' but was instead dedicated solely to determining ''whether you believe it is a case that ought to be investigated at all.''[27] In many other cases, it is apparent that—even when impeachment resolutions had been referred to them—committees conducted no formal investigation.[28]

In 1970, in a rhetorical departure from well-established practice, a subcommittee of the Judiciary Committee described itself as investigating the impeachment of Justice William O. Douglas based solely upon an impeachment resolution referred to the Judiciary Committee. *See* 116 Cong. Rec. 11920, 11942 (1970); 3 *Deschler's Precedents* ch. 14, §§14.14–14.16, at 2151–64; *see also* Labovitz, *Presidential Impeachment* at 182 n.18 (noting that ''[t]he Douglas inquiry was the first impeachment investigation in twenty-five years, and deviation from the older procedural pattern was not surprising''). Yet, the subcommittee did not resort to any compulsory process during its inquiry, and it did not recommend impeachment. 3 *Deschler's Precedents* ch. 14, §§14.15–14.16, at 2158–63. Accordingly, the committee did not actually exercise any of the investigative powers of the House.

In the late 1980s, the House Judiciary Committee considered the impeachment of three district-court judges without any express authorization from the House: Walter Nixon, Alcee Hastings, and Harry Claiborne. *See In re Application of the Comm. on the Judiciary*, 2019 WL 5485221, at *26 (discussing these investigations). All three judges had been criminally prosecuted, and two had been convicted. See H.R. Rep. No. 101–36, at 12–13 (1989) (describing Nixon's prosecution and conviction); H.R. Rep. No. 100–810, at 7–8, 29–31, 38–39 (1988) (describing Hastings's indictment and trial and the subsequent decision to proceed with a judicial-misconduct proceeding in lieu of another prosecution); H.R. Rep. No. 99–688, at 9, 17–20 (1986) (describing Claiborne's prosecution and conviction). In the Claiborne inquiry, the committee does not appear to have issued any subpoenas. *See* H.R. Rep. No. 99–688, at 4 (noting that the committee sent ''[i]nvitational letters to all witnesses,'' who apparently cooperated to the Committee's satisfaction). The committee did issue subpoenas in the Nixon and Hastings investigations, yet no witness appears to have objected on the ground that the committee lacked jurisdiction to issue the subpoenas, and at least one witness appears to have requested a subpoena.[29] In those two cases, though, the Judiciary Committee effectively compelled production without any express authorization from the House.[30]

In the years after these outliers, the Judiciary Committee returned to the practice of seeking specific authorization from the House before conducting impeachment investigations. Most notably, as discussed above, the Judiciary Committee ''decided that it *must receive authorization from the full House* before proceeding'' with an impeachment investigation of President Clinton. H.R. Rep. No. 105–795, at 24 (emphasis added). And the House has used the same practice with respect to federal judges.[31] Thus, in 2008, the House adopted a resolution authorizing the Judiciary Committee to investigate the impeachment of Judge G. Thomas Porteous, Jr., including the grant of subpoena authority. *See* H.R. Rep. No. 111–427, at 7 (2010); H.R. Res. 1448, 110th Cong. (2008); 154 Cong. Rec. 19502 (2008). After the Congress expired, the House in the next Congress adopted a new resolution re-authorizing the inquiry, again with subpoena authority. *See* H.R. Res. 15, 111th Cong. (2009); 155 Cong. Rec. 568, 571 (2009). Several months later, another district judge, Samuel Kent, pleaded guilty to obstruction of justice and was sentenced to 35 months of incarceration. *See* H.R. Rep. 111–159, at 9–13 (2009). The House then adopted a resolution directing the Judiciary Committee to investigate impeachment, again specifically granting subpoena authority. *See id.* at 13; H.R. Res. 424, 111th Cong. (2009); 155 Cong. Rec. at 12211–13.

Thus, the House's long-standing and nearly unvarying practice with respect to judicial impeachment inquiries is consistent with the conclusion that the power to investigate in support of the House's ''sole Power of Impeachment,'' U.S. Const. art. I, §2, cl. 5, may not be exercised by a committee without an express delegation from the House. In the cases of Judges Nixon and Hastings, the Judiciary Committee did exercise compulsory authority despite the absence of any delegation from the House. But insofar as no party challenged the committee's authority at the time, and no court addressed the matter, these historical outliers do not undermine the broader constitutional principle. As the Supreme Court observed in *Noel Canning*, ''when considered against 200 years of settled practice,'' a ''few scattered examples'' are rightly regarded ''as anomalies.'' 573 U.S. at 538. They do not call into question the soundness of the House's otherwise consistent historical practice, much less the constitutional requirement that a committee exercise the constitutional powers of the House only with an express delegation from the House itself.

III.

Having concluded that a House committee may not conduct an impeachment investigation without a delegation of authority, we next consider whether the House provided such a delegation to the Foreign Affairs Committee or to the other committees that issued subpoenas pursuant to the asserted impeachment inquiry. During the five weeks between the Speaker's announcement on September 24 and the adoption of Resolution 660 on October 31, the committees issued numerous impeachment-related subpoenas. *See supra* note 9. We therefore provided advice during that period about whether any of the committees had authority to issue those subpoenas. Because the House had not adopted an impeachment resolution, the answer to that question turned on whether the committees could issue those subpoenas based upon any preexisting subpoena authority.

In justifying the subpoenas, the Foreign Affairs Committee and other committees pointed to the resolution adopting the Rules of the House of Representatives, which establish the committees and authorize investigations for matters within their jurisdiction. The committees claimed that Rule XI confers authority to issue subpoenas in connection with an impeachment investigation. Although the House has expanded its committees' authority in recent decades, the House Rules continue to reflect the long-established distinction between legislative and non-legislative investigative powers. Those rules confer legislative oversight jurisdiction on committees and authorize the issuance of subpoenas to that end, but they do not grant authority to investigate for impeachment purposes. While the House committees could have sought some information relating to the same subjects in the exercise of their legislative oversight authority, the subpoenas they purported to issue ''pursuant to the House of Representatives' impeachment inquiry'' were not in support of such oversight. We therefore conclude that they were unauthorized.

A.

The standing committees of the House trace their general subpoena powers back to the House Rules, which the 116th Congress adopted by formal resolution. *See* H.R. Res. 6, 116th Cong. (2019). The House Rules are more than 60,000 words long, but they do not include the word ''impeachment.'' The Rules' silence on that topic is particularly notable when contrasted with the Senate, which has adopted specific ''Rules of Procedure and Practice'' for impeachment trials. S. Res. 479, 99th Cong. (1986).[32] The most obvious conclusion to draw from that silence is that the current House, like its predecessors, retained impeachment authority at the level of the full House, subject to potential delegations in resolutions tailored for that purpose.

Rule XI of the Rules of the House affirmatively authorizes committees to issue subpoenas, but only for matters within their legislative jurisdiction. The provision has been a part of the House Rules since 1975. *See* H.R. Res. 988, 93d Cong. §301 (1974). Clause 2(m)(1) of Rule XI vests each committee with the authority to issue subpoenas ''[f]or the purpose of carrying out any of its functions and duties under this rule and rule X (including any matters referred to it under clause 2 of rule XII).'' Rule XI, cl. 2(m)(1); *see also* Rule X, cl. 11(d)(1) (making clause 2 of Rule XI applicable to HPSCI). The committees therefore have subpoena power to carry out their authorities under three rules: Rule X, Rule XI, and clause 2 of Rule XII.

Rule X does not provide any committee with jurisdiction over impeachment. Rule X establishes the ''standing committees'' of

the House and vests them with ''their legislative jurisdictions.'' Rule X, cl. 1. The jurisdiction of each committee varies in subject matter and scope. While the Committee on Ethics, for example, has jurisdiction over only ''[t]he Code of Official Conduct'' (Rule X, cl. 1(g)), the jurisdiction of the Foreign Affairs Committee spans seventeen subjects, including ''[r]elations of the United States with foreign nations generally,'' ''[i]ntervention abroad and declarations of war,'' and ''[t]he American National Red Cross'' (Rule X, cl. 1(i)(1), (9), (15)). The rule likewise spells out the jurisdiction of the Committee on Oversight and Reform (Rule X, cl. 1(n), cl. 3(i)), and the jurisdiction of the Judiciary Committee (Rule X, cl. 1(*l*)). Clause 11 of Rule X establishes HPSCI and vests it with jurisdiction over ''[t]he Central Intelligence Agency, the Director of National Intelligence, and the National Intelligence Program'' and over ''[i]ntelligence and intelligence-related activities of all other departments and agencies.'' Rule X, cl. 11(a)(1), (b)(1)(A)–(B).

The text of Rule X confirms that it addresses the *legislative* jurisdiction of the standing committees. After defining each standing committee's subject-matter jurisdiction, the Rule provides that ''[t]he various standing committees shall have general oversight responsibilities'' to assist the House in its analysis of ''the application, administration, execution, and effectiveness of Federal laws'' and of the ''conditions and circumstances that may indicate the necessity or desirability of enacting new or additional legislation,'' as well as to assist the House in its ''formulation, consideration, and enactment of changes in Federal laws, and of such additional legislation as may be necessary or appropriate.'' Rule X, cl. 2(a)(1)–(2). The committees are to conduct oversight ''on a continuing basis'' ''to determine whether laws and programs addressing subjects within the jurisdiction of a committee'' are implemented as Congress intends ''and whether they should be continued, curtailed, or eliminated.'' Rule X, cl. 2(b)(1). Those are all functions traditionally associated with legislative oversight, not the separate power of impeachment. *See supra* Part II.A. Clause 3 of Rule X further articulates ''[s]pecial oversight functions'' with respect to particular subjects for certain committees; for example, the Committee on Foreign Affairs ''shall review and study on a continuing basis laws, programs, and Government activities relating to . . . intelligence activities relating to foreign policy,'' Rule X, cl. 3(f). And clause 4 addresses ''[a]dditional functions of committees,'' including functions related to the review of appropriations and the special authorities of the Committee on Oversight and Reform, Rule X, cl. 4(a)(1), (c)(1). But none of the ''[s]pecial oversight'' or ''[a]dditional'' functions specified in clauses 3 and 4 includes any reference to the House's impeachment power.

The powers of HPSCI are addressed in clause 11 of Rule X. Unlike the standing committees, HPSCI is not given ''[g]eneral oversight responsibilities'' in clause 2. But clause 3 gives it the ''[s]pecial oversight functions'' of ''review[ing] and study[ing] on a continuing basis laws, programs, and activities of the intelligence community'' and of ''review[ing] and study[ing] . . . the sources and methods of'' specified entities that engage in intelligence activities. Rule X, cl. 3(m). And clause 11 further provides that proposed legislation about intelligence activities will be referred to HPSCI and that HPSCI shall report to the House ''on the nature and extent of the intelligence and intelligence-related activities of the various departments and agencies of the United States.'' Rule X, cl. 11(b)(1), (c)(1); *see also* H.R. Res. 658, 95th Cong. §1 (1977) (resolution establishing HPSCI, explaining its purpose as ''provid[ing] vigilant *legislative oversight* over the intelligence and intelligence-related activities of the United States'' (emphasis added)). Again, those powers sound in legislative oversight, and nothing in the Rules suggests that HPSCI has any generic delegation of the separate power of impeachment.

Consistent with the foregoing textual analysis, Rule X has been seen as conferring legislative oversight authority on the House's committees, without any suggestion that impeachment authorities are somehow included therein. The Congressional Research Service describes Rule X as ''contain[ing] the legislative and oversight jurisdiction of each standing committee, several clauses on committee procedures and operations, and a clause specifically addressing the jurisdiction and operation of the Permanent Select Committee on Intelligence.'' Michael L. Koempel & Judy Schneider, Cong. Research Serv., R41605, *House Standing Committees' Rules on Legislative Activities: Analysis of Rules in Effect in the 114th Congress* 2 (Oct. 11, 2016); *see also* Dolan, *Congressional Oversight Manual* at 25 (distinguishing a committee inquiry with ''a legislative purpose'' from inquiries conducted under ''some other constitutional power of Congress, such as the authority'' to ''conduct impeachment proceedings''). In the chapter of *Deschler's Precedents* devoted to explaining the ''[i]nvestigations and [i]nquiries'' by the House and its committees, the Parliamentarian repeatedly notes that impeachment investigations and other non-legislative powers are discussed elsewhere. *See* 4 *Deschler's Precedents* ch. 15, §1, at 2283; *id.* §14, at 2385 n.12; *id.* §16, at 2403 & n.4.

Rule X concerns only legislative oversight, and Rule XI does not expand the committees' subpoena authority any further. That rule rests upon the jurisdiction granted in Rule X. See Rule XI, cl. 1(b)(1) (''Each committee may conduct at any time such investigations and studies as it considers necessary or appropriate in the exercise of its responsibilities under rule X.''). Nor does Rule XII confer any additional jurisdiction. Clause 2(a) states that ''[t]he Speaker shall refer each bill, resolution, or other matter that relates to a subject listed under a standing committee named in clause 1 of rule X[.]'' Rule XII, cl. 2(a). The Speaker's referral authority under Rule XII is thus limited to matters within a committee's Rule X legislative jurisdiction. *See* 18 *Deschler's Precedents* app. at 578 (''All committees were empowered by actual language of the Speaker's referral to consider only 'such provisions of the measure as fall within their respective jurisdictions under Rule X.'''). Accordingly, the Speaker may not expand the jurisdiction of a committee by referring a bill or resolution falling outside the committee's Rule X authority.[33]

In reporting Resolution 660 to the House, the Rules Committee expressed the view that clause 2(m) of Rule XI gave standing committees the authority to issue subpoenas in support of impeachment inquiries. *See* H.R. Rep. No. 116–266, at 18 (2019). But the committee did not explain which terms of the rule provide such authority. To the contrary, the committee simply asserted that the rule granted such authority and that the text of Resolution 660 departed from its predecessors on account of amendments to clause 2(m) that were adopted after the ''Clinton and Nixon impeachment inquiry resolutions.'' *Id.* Yet clause 2(m) of Rule XI was adopted two decades before the Clinton inquiry.[34] Even with that authority in place, the Judiciary Committee recognized in 1998 that it ''*must* receive authorization from the full House before proceeding'' to investigate President Clinton for impeachment purposes. H.R. Rep. No. 105–795, at 24 (emphasis added). And, even before Rule XI was adopted, the House had conferred on the Judiciary Committee a materially similar form of investigative authority (including subpoena power) in 1973.[35] The Judiciary Committee nevertheless recognized that those subpoena powers did not authorize it to conduct an impeachment inquiry about President Nixon. In other words, the Rules Committee's recent interpretation of clause 2(m) (which it did not explain in its report) cannot be reconciled with the Judiciary Committee's well-reasoned conclusion, in both 1974 and 1998, that Rule XI (and its materially similar predecessor) do not confer any standing authority to conduct an impeachment investigation.

In modern practice, the Speaker has referred proposed resolutions calling for the impeachment of a civil officer to the Judiciary Committee. *See Jefferson's Manual* §605, at 324. Consistent with this practice, the Speaker referred the Sherman resolution (H.R. Res. 13, 116th Cong.) to the Judiciary Committee, because it called for the impeachment of President Trump. Yet the referral itself did not grant authority to conduct an impeachment investigation. House committees have regularly received referrals and conducted preliminary inquiries, without compulsory process, for the purpose of determining whether to recommend that the House open a formal impeachment investigation. *See supra* Part II.C. Should a committee determine that a formal inquiry is warranted, then the committee recommends that the House adopt a resolution that authorizes such an investigation, confers subpoena power, and provides special process to the target of the investigation. The Judiciary Committee followed precisely that procedure in connection with the impeachment investigations of Presidents Nixon and Clinton, among many others. By referring an impeachment resolution to the House Judiciary Committee, the Speaker did not expand that committee's subpoena authority to cover a formal impeachment investigation. In any event, no impeachment resolution was ever referred to the Foreign Affairs Committee, HPSCI, or the Committee on Oversight and Reform. Rule XII thus could not provide any authority to those committees in support of the impeachment-related subpoenas issued before October 31.

Accordingly, when those subpoenas were issued, the House Rules did not provide authority to any of those committees to issue subpoenas in connection with potential impeachment. In reaching this conclusion, we do not question the broad authority of the House of Representatives to determine how and when to conduct its business. *See* U.S. Const. art. I, §5, cl. 2. As the Supreme Court has recognized, '''all matters of method are open to the determination''' of the House, ''as long as there is 'a reasonable relation between the mode or method of proceeding established by the rule and the result which is sought to be attained,' and the rule does not 'ignore constitutional restraints or violate fundamental rights.''' *Noel Canning*, 573 U.S. at 551 (quoting *United States* v. *Ballin*, 144 U.S. 1, 5 (1892)). The question, however, is not ''what rules Congress may establish for its own governance,'' but ''rather what rules the House has established and whether they have been followed.'' *Christoffel* v. *United States*, 338 U.S. 84, 88–89 (1949); *see also Yellin* v. *United States*, 374 U.S. 109, 121 (1963) (stating that a litigant ''is at least entitled to have the Committee follow its rules and give him consideration according to the standards it has adopted in'' the relevant rule); *United States* v. *Smith*, 286 U.S. 6, 33 (1932) (''As the construction to be given to the rules affects persons other than members of the Senate,

the question presented is of necessity a judicial one.''). Statements by the Speaker or by committee chairmen are not statements of the House itself. *Cf. Noel Canning*, 573 U.S. at 552–53 (relying on statements and actions of the Senate itself, as reflected in the Journal of the Senate and the Congressional Record, to determine when the Senate was ''in session''). Our conclusion here turned upon nothing more, and nothing less, than the rules and resolutions that had been adopted by a majority vote of the full House.[36]

The text of those provisions determined whether the House had delegated the necessary authority. See id. at 552 (''[O]ur deference to the Senate cannot be absolute. When the Senate is without the *capacity* to act, under its own rules, it is not in session even if it so declares.''). Thus, the Supreme Court has repeatedly made clear that a target of the House's compulsory process may question whether a House resolution has actually conferred the necessary powers upon a committee, because the committee's ''right to exact testimony and to call for the production of documents must be found in [the resolution's] language.'' *Rumely*, 345 U.S. at 44; *see also Watkins*, 354 U.S. at 201. In *Rumely*, the Court expressly rejected the argument that the House had confirmed the committee's jurisdiction by adopting a resolution that merely held the witness in contempt after the fact. As the Court explained, what was said ''after the controversy had arisen regarding the scope of the resolution . . . had the usual infirmity of *post litem motam*, self-serving declarations.'' 345 U.S. at 48. In other words, even a vote of the full House could not ''enlarge[]'' a committee's authority after the fact for purposes of finding that a witness had failed to comply with the obligations imposed by the subpoena. *Id.*

Here, the House committees claiming to investigate impeachment issued subpoenas before they had received *any* actual delegation of impeachment-related authority from the House. Before October 31, the committees relied solely upon statements of the Speaker, the committee chairmen, and the Judiciary Committee, all of which merely asserted that one or more House committees had already been conducting a formal impeachment inquiry. There was, however, no House resolution actually delegating such authority to any committee, let alone one that did so with ''sufficient particularity'' to compel witnesses to respond. *Watkins*, 354 U.S. at 201; *cf. Gojack* v. *United States*, 384 U.S. 702, 716–17 (1966). At the opening of this Congress, the House had not chosen to confer investigative authority over impeachment upon any committee, and therefore, no House committee had authority to compel the production of documents or testimony in furtherance of an impeachment inquiry that it was not authorized to conduct.

B.

Lacking a delegation from the House, the committees could not compel the production of documents or the testimony of witnesses for purposes of an impeachment inquiry. Because the first impeachment-related subpoena the September 27 subpoena from the Foreign Affairs Committee—rested entirely upon the purported impeachment inquiry, *see* Three Chairmen's Letter, *supra* note 2, at 1, it was not enforceable. *See, e.g.*, *Rumely*, 345 U.S. at 44. Perhaps recognizing this infirmity, the committee chairmen invoked not merely the impeachment inquiry in connection with subsequent impeachment-related subpoenas but also the committees' ''oversight and legislative jurisdiction.'' *See supra* note 9 and accompanying text. That assertion of dual authorities presented the question whether the committees could leverage their oversight jurisdiction to require the production of documents and testimony that the committees avowedly intended to use for an unauthorized impeachment inquiry. We advised that, under the circumstances of these subpoenas, the committees could not do so.

Any congressional inquiry ''must be related to, and in furtherance of, a legitimate task of the Congress.'' *Watkins*, 354 U.S. at 187. The Executive Branch need not presume that such a purpose exists or accept a ''makeweight'' assertion of legislative jurisdiction. *Mazars USA*, 940 F.3d at 725–26, 727; *see also Shelton* v. *United States*, 404 F.2d 1292, 1297 (D.C. Cir. 1968) (''In deciding whether the purpose is within the legislative function, the mere assertion of a need to consider 'remedial legislation' may not alone justify an investigation accompanied with compulsory process[.]''). Indeed, ''an assertion from a committee chairman may not prevent the Executive from confirming the legitimacy of an investigative request.'' *Congressional Committee's Request for the President's Tax Returns Under 26 U.S.C. §6103(f)*, 43 Op. O.L.C. _, at *20 (June 13, 2019). To the contrary, ''a threshold inquiry that should be made upon receipt of any congressional request for information is whether the request is supported by any legitimate legislative purpose.'' *Response to Congressional Requests for Information Regarding Decisions Made Under the Independent Counsel Act*, 10 Op. O.L.C. 68, 74 (1986); *see also Congressional Requests for Confidential Executive Branch Information*, 13 Op. O.L.C. 153, 159 (1989) (recognizing that the constitutionally mandated accommodation process ''requires that each branch explain to the other why it believes its needs to be legitimate'').

Here, the committee chairmen made clear upon issuing the subpoenas that the committees were interested in the requested materials to support an investigation into the potential impeachment of the President, not to uncover information necessary for potential legislation within their respective areas of legislative jurisdiction. In marked contrast with routine oversight, each of the subpoenas was accompanied by a letter signed by the chairs of three different committees, who transmitted a subpoena ''[p]ursuant to the House of Representatives' impeachment inquiry'' and recited that the documents would ''be collected as part of the House's impeachment inquiry,'' and that they would be ''shared among the Committees, as well as with the Committee on the Judiciary as appropriate.'' *See supra* note 9 and accompanying text. Apart from their token invocations of ''oversight and legislative jurisdiction,'' the letters offered no hint of any legislative purpose. The committee chairmen were therefore seeking to do precisely what they said—compel the production of information to further an impeachment inquiry.

In reaching this conclusion, we do not foreclose the possibility that the Foreign Affairs Committee or the other committees could have issued similar subpoenas in the bona fide exercise of their legislative oversight jurisdiction, in which event the requests would have been evaluated consistent with the long-standing confidentiality interests of the Executive Branch. *See Watkins*, 354 U.S. at 187 (recognizing that Congress's general investigative authority ''comprehends probes into departments of the Federal Government to expose corruption, inefficiency or waste''); *McGrain*, 273 U.S. at 179–80 (observing that it is not ''a valid objection to the investigation that it might possibly disclose crime or wrongdoing on [the Attorney General's] part''). Should the Foreign Affairs Committee, or another committee, articulate a legitimate oversight purpose for a future information request, the Executive Branch would assess that request as part of the constitutionally required accommodation process. But the Executive Branch was not confronted with that situation. The committee chairmen unequivocally attempted to conduct an impeachment inquiry into the President's actions, without the House, which has the ''sole Power of Impeachment,'' having authorized such an investigation. Absent such an authorization, the committee chairs' passing mention of ''oversight and legislative jurisdiction'' did not cure that fundamental defect.

C.

We next address whether the House ratified any of the previous committee subpoenas when it adopted Resolution 660 on October 31, 2019—after weeks of objections from the Executive Branch and many members of Congress to the committees' efforts to conduct an unauthorized impeachment inquiry. Resolution 660 provides that six committees of the House ''are directed to continue their ongoing investigations as part of the existing House of Representatives inquiry into whether sufficient grounds exist for the House of Representatives to exercise its Constitutional power to impeach Donald John Trump, President of the United States of America.'' Resolution 660, §1. The resolution further prescribes certain procedures by which HPSCI and the Judiciary Committee may conduct hearings in connection with the investigation defined by that resolution.

Resolution 660 does not speak at all to the committees' past actions or seek to ratify any subpoena previously issued by the House committees. *See Trump v. Mazars USA, LLP*, 941 F.3d 1180, 1182 (D.C. Cir. 2019) (Rao, J., dissenting from the denial of rehearing en banc); *see also Exclusion of Agency Counsel from Congressional Depositions in the Impeachment Context*, 43 Op. O.L.C. _, at *5 (Nov. 1, 2019). The resolution ''direct[s]'' HPSCI and other committees to ''continue'' their investigations, and the Rules Committee apparently assumed, incorrectly in our view, that earlier subpoenas were legally valid. *See* H.R. Rep. No. 116–266, at 3 (''All subpoenas to the Executive Branch remain in full force.''). But the resolution's operative language does not address any previously issued subpoenas or provide the imprimatur of the House to give those subpoenas legal force.

And the House knows how to ratify existing subpoenas when it chooses to do so.[37] On July 24, 2019, the House adopted a resolution that expressly ''ratif[ied] and affirm[ed] all current and future investigations, as well as *all subpoenas previously issued* or to be issued in the future,'' related to certain enumerated subjects within the jurisdiction of standing or select committees of the House ''as established by the Constitution of the United States and rules X and XI of the Rules of the House of Representatives.'' H.R. Res. 507, 116th Cong. §1 (2019) (emphasis added). There, as here, the House acted in response to questions regarding ''the validity of . . . [committee] investigations and subpoenas.'' *Id.* pmbl. Despite that recent model, Resolution 660 contains no comparable language seeking to ratify previously issued subpoenas. The resolution directs certain committees to ''continue'' investigations, and it specifies procedures to govern future hearings, but nothing in the resolution looks backward to actions previously taken. Accordingly, Resolution 660 did not ratify or otherwise authorize the impeachment-related subpoenas issued before October 31, which therefore still had no compulsory effect on their recipients.

IV.

Finally, we address some of the consequences that followed from our conclusion that the committees' pre-October 31 impeachment-related subpoenas were unauthorized. First, because the subpoenas exceeded

the committees' investigative authority and lacked compulsory effect, the committees were mistaken in contending that the recipients' ''failure or refusal to comply with the subpoena [would] constitute evidence of obstruction of the House's impeachment inquiry.'' Three Chairmen's Letter, *supra* note 2, at 1.[38] As explained at length above, when the subpoenas were issued, there was no valid impeachment inquiry. To the extent that the committees' subpoenas sought information in support of an unauthorized impeachment inquiry, the failure to comply with those subpoenas was no more punishable than were the failures of the witnesses in *Watkins*, *Rumely*, *Kilbourn*, *and Lamont* to answer questions that were beyond the scope of those committees' authorized jurisdiction. *See Watkins*, 354 U.S. at 206, 215 (holding that conviction for contempt of Congress was invalid because, when the witness failed to answer questions, the House had not used sufficient ''care . . . in authorizing the use of compulsory process'' and the committee had not shown that the information was pertinent to a subject within ''the mission[] delegated to'' it by the House); *Rumely*, 345 U.S. at 42–43, 48 (affirming reversal of conviction for contempt of Congress because it was not clear at the time of questioning that ''the committee was authorized to exact the information which the witness withheld''); *Kilbourn*, 103 U.S. at 196 (sustaining action brought by witness for false imprisonment because the committee ''had no lawful authority to require Kilbourn to testify as a witness beyond what he voluntarily chose to tell''); *Lamont*, 18 F.R.D. at 37 (dismissing indictment for contempt of Congress in part because the indictment did not sufficiently allege, among other things, ''that the [Permanent Subcommittee on Investigations] . . . was duly empowered by either House of Congress to conduct the particular inquiry'' or ''that the inquiry was within the scope of the authority granted to the [sub]committee''). That alone suffices to prevent noncompliance with the subpoenas from constituting ''obstruction of the House's impeachment inquiry.''

Second, we note that whether or not the impeachment inquiry was authorized, there were other, independent grounds to support directions by the Executive Branch that witnesses not appear in response to the committees' subpoenas. We recently advised you that executive privilege continues to be available during an impeachment investigation. *See Exclusion of Agency Counsel from Congressional Depositions in the Impeachment Context*, 43 Op. O.L.C. __, at *2–5. The mere existence of an impeachment investigation does not eliminate the President's need for confidentiality in connection with the performance of his duties. Just as in the context of a criminal trial, a dispute over a request for privileged information in an impeachment investigation must be resolved in a manner that ''preserves the essential functions of each branch.'' *United States* v. *Nixon*, 418 U.S. 683, 707 (1974). Thus, while a committee ''may be able to establish an interest justifying its requests for information, the Executive Branch also has legitimate interests in confidentiality, and the resolution of these competing interests requires a careful balancing of each branch's need in the context of the particular information sought.'' *Exclusion of Agency Counsel from Congressional Depositions in the Impeachment Context*, 43 Op. O.L.C. __, at *4.

Accordingly, we recognized, in connection with HPSCI's impeachment investigation after October 31, that the committee may not compel an executive branch witness to appear for a deposition without the assistance of agency counsel, when that counsel is necessary to assist the witness in ensuring the appropriate protection of privileged information during the deposition. *See id*. at *4–5. In addition, we have concluded that the testimonial immunity of the President's senior advisers ''applies in an impeachment inquiry just as it applies in a legislative oversight inquiry.'' Letter for Pat A. Cipollone, Counsel to the President, from Steven A. Engel, Assistant Attorney General, Office of Legal Counsel at 2 (Nov. 3, 2019).

Thus, even when the House takes the steps necessary to authorize a committee to investigate impeachment and compel the production of needed information, the Executive Branch continues to have legitimate interests to protect. The Constitution does not oblige either branch of government to surrender its legitimate prerogatives, but expects that each branch will negotiate in good faith with mutual respect for the needs of the other branch. *See United States* v. *Am. Tel. & Tel. Co.*, 567 F.2d 121, 127 (D.C. Cir. 1977) (''[E]ach branch should take cognizance of an implicit constitutional mandate to seek optimal accommodation through a realistic evaluation of the needs of the conflicting branches in the particular fact situation.''); *see also* Memorandum for the Heads of Executive Departments and Agencies from President Ronald Reagan, *Re: Procedures Governing Responses to Congressional Requests for Information* (Nov. 4, 1982). The two branches should work to identify arrangements in the context of the particular requests of an investigating committee that accommodate both the committee's needs and the Executive Branch's interests.

For these reasons, the House cannot plausibly claim that any executive branch official engaged in ''obstruction'' by failing to comply with committee subpoenas, or directing subordinates not to comply, in order to protect the Executive Branch's legitimate interests in confidentiality and the separation of powers. We explained thirty-five years ago that ''the Constitution does not permit Congress to make it a crime for an official to assist the President in asserting a constitutional privilege that is an integral part of the President's responsibilities under the Constitution.'' *Prosecution for Contempt of Congress of an Executive Branch Official Who Has Asserted a Claim of Executive Privilege*, 8 Op. O.L.C. 101, 140 (1984). Nor may Congress ''utilize its inherent 'civil' contempt powers to arrest, bring to trial, and punish an executive official who assert[s] a Presidential claim of executive privilege.'' *Id*. at 140 n.42. We have reaffirmed those fundamental conclusions in each of the subsequent decades.[39]

The constitutionally required accommodation process, of course, is a two-way street. In connection with this investigation, the House committees took the unprecedented steps of investigating the impeachment of a President without any authorization from the full House; without the procedural protections provided to Presidents Nixon and Clinton, *see supra* note 12; and with express threats of obstruction charges and unconstitutional demands that officials appear and provide closed-door testimony about privileged matters without the assistance of executive branch counsel. Absent any effort by the House committees to accommodate the Executive Branch's legitimate concerns with the unprecedented nature of the committees' actions, it was reasonable for executive branch officials to decline to comply with the subpoenas addressed to them.

V.

For the reasons set forth above, we conclude that the House must expressly authorize a committee to conduct an impeachment investigation and to use compulsory process in that investigation before the committee may compel the production of documents or testimony in support of the House's ''sole Power of Impeachment.'' U.S. Const. art. I, §2, cl. 5. The House had not authorized such an investigation in connection with the impeachment-related subpoenas issued before October 31, 2019, and the subpoenas therefore had no compulsory effect. The House's adoption of Resolution 660 did not alter the legal status of those subpoenas, because the resolution did not ratify them or otherwise address their terms.

Please let us know if we may be of further assistance.

STEVEN A. ENGEL,
Assistant Attorney General.

1. Nancy Pelosi, Speaker of the House, *Press Release: Pelosi Remarks Announcing Impeachment Inquiry* (Sept. 24, 2019), www.speaker.gov/newsroom/92419-0 (''Pelosi Press Release'').

2. Letter for Michael R. Pompeo, Secretary of State, from Eliot L. Engel, Chairman, Committee on Foreign Affairs, U.S. House of Representatives, Adam Schiff, Chairman, Permanent Select Committee on Intelligence, U.S. House of Representatives, and Elijah E. Cummings, Chairman, Committee on Oversight & Reform, U.S. House of Representatives at 1 (Sept. 27, 2019) (''Three Chairmen's Letter'').

3. Although volume 3 of *Deschler's Precedents* was published in 1979, our citations of *Deschler's Precedents* use the continuously paginated version that is available at www.govinfo.gov/collection/precedents-of-the-house.

4. *Impeachment Articles Referred on John Koskinen (Part III): Hearing Before the H. Comm. on the Judiciary*, 114th Cong. 3 (2016).

5. This opinion memorializes the advice we gave about subpoenas issued before October 31. We separately addressed some subpoenas issued after that date. *See, e.g.*, Letter for Pat A. Cipollone, Counsel to the President, from Steven A. Engel, Assistant Attorney General, Office of Legal Counsel (Nov. 7, 2019) (subpoena to Mick Mulvaney); Letter for Pat A. Cipollone, Counsel to the President, from Steven A. Engel, Assistant Attorney General, Office of Legal Counsel (Nov. 3, 2019) (subpoena to John Eisenberg); *Exclusion of Agency Counsel from Congressional Depositions in the Impeachment Context*, 43 Op. O.L.C. _ (Nov. 1, 2019).

6. U.S. House of Representatives Committee on the Judiciary, *Press Release: House Judiciary Committee Unveils Investigation into Threats Against the Rule of Law* (Mar. 4, 2019), judiciary.house.gov/news/press-releases/house-judiciary-committee-unveils-investigation-threats-against-rule-law; *see also* Letter for the White House, c/o Pat Cipollone, from Jerrold Nadler, Chairman, Committee on the Judiciary, U.S. House of Representatives (Mar. 4, 2019).

7. On June 11, 2019, the full House adopted Resolution 430. Its first two clauses authorized the Judiciary Committee to file a lawsuit to enforce subpoenas against Attorney General William Barr and former White House Counsel Donald McGahn and purported to authorize the Bipartisan Legal Advisory Group to approve future litigation. *See* H.R. Res. 430, 116th Cong. (2019). The next clause of the resolution then stated that, ''in connection with any judicial proceeding brought under the first or second resolving clauses, the chair of any standing or permanent select committee exercising authority thereunder has any and all necessary authority under Article I of the Constitution.'' *Id*. The resolution did not mention ''impeachment'' and, by its terms, authorized actions only in connection with the litigation authorized ''under the first or second resolving clauses.'' On the same day that the House adopted Resolution 430, Speaker Pelosi stated that the House's Democratic caucus was

''not even close'' to an impeachment inquiry. *Rep. Nancy Pelosi (D-CA) Continues Resisting Impeachment Inquiry*, CNN (June 11, 2019), transcripts.cnn.com/TRANSCRIPTS/1906/11/cnr.04 html.

8. While the House has delegated to the Bipartisan Legal Advisory Group the ability to ''articulate[ ] the institutional position of '' the House, it has done so only for purposes of ''litigation matters.'' H.R. Rule II, cl. 8(b). Therefore, neither the group, nor the House counsel implementing that group's directions, could assert the House's authority in connection with an impeachment investigation, which is not a litigation matter.

9. *E.g.*, Letter for John Michael Mulvaney, Acting Chief of Staff to the President, from Elijah E. Cummings, Chairman, Committee on Oversight & Reform, U.S. House of Representatives, Adam B. Schiff, Chairman, Permanent Select Committee on Intelligence, U.S. House of Representatives, and Eliot L. Engel, Chairman, Committee on Foreign Affairs, U.S. House of Representatives at 1 (Oct. 4, 2019); Letter for Mark T. Esper, Secretary of Defense, from Adam B. Schiff, Chairman, Permanent Select Committee on Intelligence, U.S. House of Representatives, Eliot L. Engel, Chairman, Committee on Foreign Affairs, U.S. House of Representatives, and Elijah E. Cummings, Chairman, Committee on Oversight & Reform, U.S. House of Representatives at 1 (Oct. 7, 2019); Letter for Gordon Sondland, U.S. Ambassador to the European Union, from Adam B. Schiff, Chairman, Permanent Select Committee on Intelligence, U.S. House of Representatives, Elijah E. Cummings, Chairman, Committee on Oversight & Reform, U.S. House of Representatives, and Eliot L. Engel, Chairman, Committee on Foreign Affairs, U.S. House of Representatives at 1 (Oct. 8, 2019); Letter for James Richard ''Rick'' Perry, Secretary of Energy, from Eliot L. Engel, Chairman, Committee on Foreign Affairs, U.S. House of Representatives, Adam B. Schiff, Chairman, Permanent Select Committee on Intelligence, U.S. House of Representatives, and Elijah E. Cummings, Chairman, Committee on Oversight & Reform, U.S. House of Representatives at 1 (Oct. 10, 2019).

10. Letter for Nancy Pelosi, Speaker, U.S. House of Representatives, et al., from Pat A. Cipollone, Counsel to the President at 2–3 (Oct. 8, 2019).

11. *See* Letter for Nancy Pelosi, Speaker, U.S. House of Representatives, from Kevin McCarthy, Republican Leader, U.S. House of Representatives at 1 & n.1 (Oct. 3, 2019); Mem. Amicus Curiae of Ranking Member Doug Collins in Support of Denial at 5–21, *In re Application of the Comm. on the Judiciary* (D.D.C. Oct. 3, 2019).

12. The House Judiciary Committee permitted President Nixon's counsel to submit and respond to evidence, to request to call witnesses, to attend hearings and examinations, to object to the examination of witnesses and the admissibility of testimony, and to question witnesses. *See* H.R. Rep. No. 93–1305, at 8–9 (1974); 3 *Deschler's Precedents* ch. 14, §6.5, at 2045–47. Later, President Clinton and his counsel were similarly ''invited to attend all executive session and open committee hearings,'' at which they were permitted to ''cross examine witnesses,'' ''make objections regarding the pertinency of evidence,'' ''suggest that the Committee receive additional evidence,'' and ''respond to the evidence adduced by the Committee.'' H.R. Rep. No. 105–795, at 25–26; *see also* 18 *Deschler's Precedents* app. at 549 (2013) (noting that, during the Clinton impeachment investigation, the House made a ''deliberate attempt to mirror [the] documented precedents and proceedings'' of the Nixon investigation). In a departure from the Nixon and Clinton precedents, the House committees did not provide President Trump with any right to attend, participate in, or cross-examine witnesses in connection with the impeachment-related depositions conducted by the three committees before October 31. Resolution 660 similarly did not provide any such rights with respect to any of the public hearings conducted by HPSCI, limiting the President's opportunity to participate to the Judiciary Committee, which did not itself participate in developing the investigative record upon which the articles of impeachment were premised. *See* H.R. Res. 660, 116th Cong. §4(a); 165 Cong. Rec. E1357 (daily ed. Oct. 29, 2019) (''Impeachment Inquiry Procedures in the Committee on the Judiciary'').

13. In denying the congressional request before him, President Polk suggested, in the equivalent of dictum, that, during an impeachment inquiry, ''all the archives and papers of the Executive departments, public or private, would be subject to the inspection and control of a committee of their body.'' Cong. Globe, 29th Cong., 1st Sess. 698 (1846). That statement, however, dramatically understates the degree to which executive privilege remains available during an impeachment investigation to protect confidentiality interests necessary to preserve the essential functions of the Executive Branch. *See Exclusion of Agency Counsel from Congressional Depositions in the Impeachment Context*, 43 Op. O.L.C. _, at *3 & n.1 (Nov. 1, 2019). In a prior opinion, this Office viewed Polk as acknowledging the continued availability of executive privilege, because we read Polk's preceding sentence as ''indicat[ing]'' that, even in the impeachment context, ''the Executive branch 'would adopt all wise precautions to prevent the exposure of all such matters the publication of which might injuriously affect the public interest, except so far as this might be necessary to accomplish the great ends of public justice.''' Memorandum for Elliot Richardson, Attorney General, from Robert G. Dixon, Jr., Assistant Attorney General, Office of Legal Counsel, *Re: Presidential Immunity from Coercive Congressional Demands for Information* at 22–23 (July 24, 1973) (quoting Polk's letter).

14. *See, e.g.*, Cong. Globe, 29th Cong., 1st Sess. 636 (1846) (statement of Rep. Ingersoll) (''Whether . . . [Webster's] offences will be deemed impeachable misdemeanors in office, conviction for which might remove him from the Senate, and disqualify him to hold any office of honor, trust, or profit, under the United States, will remain to be considered.''); Todd Garvey, *The Webster and Ingersoll Investigations*, in Morton Rosenberg, The Constitution Project, *When Congress Comes Calling* 289 (2017).

15. When the House first considered impeachment in 1796, Attorney General Charles Lee advised that, ''before an impeachment is sent to the Senate, witnesses must be examined, in solemn form, respecting the charges, before a committee of the House of Representatives, to be appointed for that purpose.'' Letter for the House of Representatives from Charles Lee, Attorney General, *Re: Inquiry into the Official Conduct of a Judge of the Supreme Court of the Northwestern Territory* (May 9, 1796), *reprinted in* 1 Am. State Papers: Misc. 151 (Walter Lowrie & Walter S. Franklin eds., 1834). Because the charges of misconduct concerned the actions of George Turner, a territorial judge, and the witnesses were located in far-away St. Clair County (modern-day Illinois), Lee suggested that the ''most solemn'' mode of prosecution, an impeachment trial before the Senate, would be ''very inconvenient, if not entirely impracticable.'' *Id.* Lee informed the House that President Washington had directed the territorial governor to arrange for a criminal prosecution before the territorial court. *See id.* The House committee considering the petition about Turner agreed with Lee's suggestion and recommended that the House take no further action. *See Inquiry into the Official Conduct of a Judge of the Supreme Court of the Northwestern Territory* (Feb. 27, 1797), *reprinted in* 1 Am. State Papers: Misc. at 157.

16. After the House impeached Senator Blount, the Senate voted to dismiss the charges on the ground that a Senator is not a civil officer subject to impeachment. *See* 3 *Hinds' Precedents* §2318, at 678–80.

17. A 2007 overview concluded that ''[t]here have been approximately 94 identifiable impeachment-related inquiries conducted by Congress[.]'' H.R. Doc. No. 109–153, at 115 (2007). Since 2007, two more judges have been impeached following authorized investigations.

18. The district court's erroneous conclusions rested upon the arguments offered by the House Judiciary Committee, which relied principally upon the judicial outliers from the 1980s, a misunderstanding of the Nixon impeachment inquiry, and a misreading of the committee's subpoena power under the House Rules. *See* Application at 33–34, *In re Application of the Comm. on the Judiciary* (D.D.C. July 26, 2019); Reply of the Committee on the Judiciary, U.S. House of Representatives, in Support of Its Application for an Order Authorizing the Release of Certain Grand Jury Materials, at 16 n.19, *In re Application of the Comm. on the Judiciary* (D.D.C. Sept. 30, 2019). HPSCI and the Judiciary Committee later reiterated these arguments in their reports, each contending that executive branch officials had ''obstructed'' the House's impeachment inquiry by declining to comply with the pre-October 31 impeachment-related subpoenas. H.R. Rep. No. 116–335, at 168–72, 175–77 (2019); H.R. Rep. No. 116–346, at 10, 13–16 (2019). But those reports asserted that the pre-October 31 subpoenas were authorized because the committees misunderstood the historical practice concerning the House's impeachment inquiries (as we discuss in Part II.C) and they misread the committees' subpoena authority under the House Rules (as we discuss in Part III.A).

19. *See, e.g.*, Cong. Globe, 27th Cong., 3d Sess. 144, 146 (1843) (John Tyler); Cong. Globe, 39th Cong., 2d Sess. 320 (1867) (Andrew Johnson); 28 Cong. Rec. 5627, 5650 (1896) (Grover Cleveland); 76 Cong. Rec. 399–402 (1932) (Herbert Hoover); H.R. Res. 607, 82d Cong. (1952) (Harry Truman); H.R. Res. 625, 93d Cong. (1973) (Richard Nixon); H.R. Res. 370, 98th Cong. (1983) (Ronald Reagan); H.R. Res. 34, 102d Cong. (1991) (George H.W. Bush); H.R. Res. 525, 105th Cong. (1998) (Bill Clinton); H.R. Res. 1258, 110th Cong. (2008) (George W. Bush); H.R. Res. 13, 106th Cong. (2019) (Donald Trump).

20. In 1860, the House authorized an investigation into the actions of President Buchanan, but that investigation was not styled as an impeachment investigation. *See* Cong. Globe, 36th Cong., 1st Sess. 997–98 (1860) (resolution establishing a committee of five members to ''investigat[e] whether the President of the United States, or any other officer of the government, ha[d], by money, patronage, or other improper means, sought to influence the action of Congress'' or ''by combination or otherwise, . . . attempted to prevent or defeat, the execution of any law''). It appears to have been understood by the committee as an oversight investigation. *See* H.R. Rep. No. 36–648, at 1–28 (1860). Buchanan in fact objected to the House's use of its legislative jurisdiction to circumvent the protections traditionally provided in connection with impeachment. *See* Message for the U.S. House of Representatives from James Buchanan (June 22, 1860), *reprinted in* 5 *A Compilation of the Messages and Papers of*

the Presidents 625 (James D. Richardson ed., 1897) (objecting that if the House suspects presidential misconduct, it should ''transfer the question from [its] legislative to [its] accusatory jurisdiction, and take care that in all the preliminary judicial proceedings preparatory to the vote of articles of impeachment the accused should enjoy the benefit of cross-examining the witnesses and all the other safeguards with which the Constitution surrounds every American citizen''); *see also Mazars USA*, 940 F.3d at 762 (Rao, J., dissenting) (discussing the episode).

21. The district court's recent decision in *In re Application of the Committee on the Judiciary* misreads *Hinds' Precedents* to suggest that the House Judiciary Committee (which the court called ''HJC'') began investigating President Johnson's impeachment without any authorizing resolution. According to the district court, ''a resolution authoriz[ing]' HJC to inquire into the official conduct of Andrew Johnson' was passed *after* HJC 'was already considering the subject.' '' 2019 WL 5485221, at *27 (quoting 3 *Hinds' Precedents* §2400, at 824). In fact, the committee was ''already considering the subject'' at the time of the February 4 resolution described in the quoted sentence because, as explained in the text above, the House had previously adopted a separate resolution authorizing an impeachment investigation. *See* Cong. Globe, 39th Cong., 2d Sess. 320–21 (1867); 3 *Hinds' Precedents* §2400, at 824.

22. *See, e.g.*, H.R. Res. 625, 631, 635, and 638, 93d Cong. (1973) (impeachment); H.R. Res. 626, 627, 628, 636, and 637, 93d Cong. (1973) (Judiciary Committee or subcommittee investigation).

23. A *New York Times* article the following day characterized House Resolution 803 as ''formally ratif[ying] the impeachment inquiry begun by the committee [the prior] October.'' James M. Naughton, *House, 410–4, Gives Subpoena Power in Nixon Inquiry*, N.Y. Times, Feb. 7, 1974, at 1. But the resolution did not grant after-the-fact authorization for any prior action. To the contrary, the resolution ''authorized and directed'' a future investigation, including by providing subpoena power. In the report recommending adoption of the resolution, the committee likewise described its plans in the future tense: ''It is the intention of the committee that its investigation will be conducted in all respects on a fair, impartial and bipartisan basis.'' H.R. Rep. No. 93–774, at 3 (1974).

24. As with Presidents, many of these resolutions remained with the committees until they expired at the end of the Congress. Several merely articulated allegations of impeachment. *See, e.g.*, H.R. Res. 1028, 115th Cong. (2018) (Deputy Attorney General Rod Rosenstein); H.R. Res. 417, 114th Cong. (2015) (Administrator of the Environmental Protection Agency Regina McCarthy); H.R. Res. 411, 113th Cong. (2013) (Attorney General Eric Holder); H.R. Res. 333, 110th Cong. (2007) (Vice President Richard Cheney); H.R. Res. 629, 108th Cong. (2004) (Secretary of Defense Donald Rumsfeld); H.R. Res. 805, 95th Cong. (1977) (United Nations Ambassador Andrew Young); H.R. Res. 274, 95th Cong. (1977) (Commissioner of the Federal Trade Commission Paul Dixon); H.R. Res. 881, 94th Cong. (1975) (U.S. Attorney Jonathan Goldstein and Principal Assistant U.S. Attorney Bruce Goldstein); H.R. Res. 647, 94th Cong. (1975) (Ambassador to Iran Richard Helms); H.R. Res. 547, 94th Cong. (1975) (Special Crime Strike Force Prosecutor Liam Coonan). Others called for an investigation. *See, e.g.*, H.R. Res. 589, 110th Cong. (2007) (Attorney General Alberto Gonzales); H.R. Res. 582, 105th Cong. (1998) (Independent Counsel Kenneth Starr); H.R. Res. 102, 99th Cong. (1985) (Chairman of the Board of Governors of the Federal Reserve System Paul Volcker); H.R. Res. 101, 99th Cong. (1985) (same and others); H.R. Res. 1025, 95th Cong. (1978) (Attorney General Griffin Bell); H.R. Res. 1002, 95th Cong. (1978) (same); H.R. Res. 569, 93d Cong. (1973) (Vice President Spiro Agnew); H.R. Res. 67, 76th Cong. (1939) (Secretary of Labor Frances Perkins and others); 28 Cong. Rec. 114, 126 (1895) (Ambassador to Great Britain Thomas Bayard); 16 Cong. Rec. 17–19 (1884) (U.S. Marshal Lot Wright); Cong. Globe, 40th Cong., 1st Sess. 778–79 (1867) (Minister to Great Britain Charles Francis Adams). On occasion, the House voted to table these resolutions instead of referring them to a committee. *See, e.g.*, H.R. Res. 545, 105th Cong. (1998) (resolution of impeachment for Independent Counsel Kenneth Starr); H.R. Res. 1267, 95th Cong. (1978) (resolution of impeachment for Ambassador to the United Nations Andrew Young).

25. In 1878, the Committee on Expenditures in the State Department, which was charged with investigative authority for ''the exposing of frauds or abuses of any kind,'' 7 Cong. Rec. 287, 290 (1878), was referred an investigation into maladministration at the consulate in Shanghai during the terms of Consul-General George Seward and Vice Consul-General O.B. Bradford, *id.* at 504, 769. Eventually, the committee began to consider Seward's impeachment, serving him with a subpoena for testimony and documents, in response to which he asserted his privilege against self-incrimination. *See* 3 *Hinds' Precedents* §2514, at 1023–24; H.R. Rep. No. 45–141, at 1–3 (1879). The committee recommended articles of impeachment, but the House declined to act before the end of the Congress. *See* 8 Cong. Rec. 2350–55 (1879); 3 *Hinds' Precedents* §2514, at 1025. During this same period, the Committee on Expenditures reported proposed articles of impeachment against Bradford but recommended ''that the whole subject be referred to the Committee on the Judiciary'' for further consideration. H.R. Rep. No. 45–818, at 7 (1878). The House agreed to the referral, but no further action was taken. 7 Cong. Rec. at 3667.

26. *See, e.g., 3 Hinds' Precedents* §2489, at 986 (William Van Ness, Mathias Tallmadge, and William Stephens, 1818); *id.* §2490, at 987 (Joseph Smith, 1825); *id.* §2364, at 774 (James Peck, 1830); *id.* §2492, at 990 (Alfred Conkling, 1830); *id.* §2491, at 989 (Buckner Thurston, 1837); *id.* §2494, at 993–94 (P.K. Lawrence, 1839); *id.* §§2495, 2497, 2499, at 994, 998, 1003 (John Watrous, 1852–60); *id.* §2500, at 1005 (Thomas Irwin, 1859); *id.* §2385, at 805 (West Humphreys, 1862); *id.* §2503, at 1008 (anonymous justice of the Supreme Court, 1868); *id.* §2504, at 1008–09 (Mark Delahay, 1872); *id.* §2506, at 1011 (Edward Durell, 1873); *id.* §2512, at 1021 (Richard Busteed, 1873); *id.* §2516, at 1027 (Henry Blodgett, 1879); *id.* §§2517–18, at 1028, 1030–31 (Aleck Boarman, 1890–92); *id.* §2519, at 1032 (J.G. Jenkins, 1894); *id.* §2520, at 1033 (Augustus Ricks, 1895); *id.* §2469, at 949–50 (Charles Swayne, 1903); 6 Clarence Cannon, *Cannon's Precedents of the House of Representatives of the United States* §498, at 685 (1936) (Robert Archbald, 1912); *id.* §526, at 746–47 (Cornelius H. Hanford, 1912); *id.* §527, at 749 (Emory Speer, 1913); *id.* §528, at 753 (Daniel Wright, 1914); *id.* §529, at 756 (Alston Dayton, 1915); *id.* §543, at 777–78 (William Baker, 1924); *id.* §544, at 778–79 (George English, 1925); *id.* §549, at 789–90 (Frank Cooper, 1927); *id.* §550, at 791–92 (Francis Winslow, 1929); *id.* §551, at 793 (Harry Anderson, 1930); *id.* §552, at 794 (Grover Moscowitz, 1930); *id.* §513, at 709–10 (Harold Louderback, 1932); 3 *Deschler's Precedents* ch. 14, §14.4, at 2143 (James Lowell, 1933); *id.* §18.1, at 2205–06 (Halsted Ritter, 1933); *id.* §14.10, at 2148 (Albert Johnson and Albert Watson, 1944); H.R. Res. 1066, 94th Cong. (1976) (certain federal judges); H.R. Res. 966, 95th Cong. (1978) (Frank Battisti); *see also* 51 Cong. Rec. 6559–60 (1914) (noting passage of authorizing resolution for investigation of Daniel Wright); 68 Cong. Rec. 3532 (1927) (same for Frank Cooper).

27. *Articles for the Impeachment of Lebbeus R. Wilfley, Judge of the U.S. Court for China: Hearings Before a Subcomm. of the H. Comm. on the Judiciary*, 60th Cong. 4 (1908) (statement of Rep. Waldo); *see also id.* at 45–46 (statement of Rep. Moon) (''This committee conceives to be its duty solely, under the resolution referring this matter to them, to examine the charges preferred in the petition . . . and to report thereon whether in its judgement the petitioner has made out a prima facie case; and also whether . . . Congress should adopt a resolution instructing the Judiciary Committee to proceed to an investigation of the facts of the case.''); 6 *Cannon's Precedents* §525, at 743– 45 (summarizing the Wilfley case, in which the Judiciary Committee ultimately reported that no formal investigation was warranted). The case of Judge Samuel Alschuler in 1935 similarly involved only a preliminary investigation—albeit one with actual investigative powers. The House first referred to the Judiciary Committee a resolution that, if approved, would authorize an investigation of potential impeachment charges. *See* 79 Cong. Rec. 7086, 7106 (1935). Six days later, it adopted a resolution that granted the committee investigative powers in support of ''the preliminary examinations deemed necessary'' for the committee to make a recommendation about whether a full investigation should occur. *Id.* at 7393–94. The committee ultimately recommended against a full investigation. *See* H.R. Rep. No. 74–1802, at 2 (1935).

28. *See, e.g.*, 18 Annals of Cong. 1885–86, 2197–98 (1808) (Harry Innes, 1808; the House passed a resolution authorizing an impeachment investigation, which concluded that the evidence accompanying the resolution did not support impeachment); 3 *Hinds' Precedents* §2486, at 981–83 (George Turner, 1796; no apparent investigation, presumably because of the parallel criminal prosecution recommended by Attorney General Lee, as discussed above); *id.* §2488, at 985 (Harry Toulmin, 1811; the House ''declined to order a formal investigation''); 40 Annals of Cong. 463–69, 715–18 (1822–23) (Charles Tait, 1823; no apparent investigation beyond examination of documents containing charges); 3 *Hinds' Precedents* §2493, at 991–92 (Benjamin Johnson, 1833; no apparent investigation); *id.* §2511, at 1019–20 (Charles Sherman, 1873; the Judiciary Committee received evidence from the Ways and Means Committee, which had been investigating corruption in Congress, but the Judiciary Committee conducted no further investigation); 6 *Cannon's Precedents* §535, at 769 (Kenesaw Mountain Landis, 1921; the Judiciary Committee reported that ''charges were filed too late in the present session of the Congress'' to enable investigation); 3 *Deschler's Precedents* ch. 14, §14.6, at 2144–45 (Joseph Molyneaux, 1934; the Judiciary Committee took no action on the referral of a resolution that would have authorized an investigation).

29. *See* H.R. Rep. No. 100–810, at 11 & n.14 (stating that, in the Hastings investigation, a committee subpoena had been issued for William Borders, who challenged the subpoena on First, Fourth, Fifth, and Eighth Amendment grounds); H.R. Rep. No. 100–1124, at 130 (1989) (noting the issuance of ''subpoenas *duces tecum*'' in the investigation of Judge Nixon); 134 Cong. Rec. 27782 (1988) (statement of Rep. Edwards) (explaining the subcommittee's need to depose some witnesses pursuant to subpoena in the Nixon investigation); *Judge Walter L. Nixon, Jr., Impeachment Inquiry: Hearing Before the Subcomm. on Civil & Constitutional Rights of the H. Comm. on the Judiciary*, 101st Cong. 530–606 (1988) (reprinting deposition of Magistrate Judge Roper).

30. The House did pass resolutions authorizing funds for investigations with respect to the Hastings impeachment, *see* H.R. Res. 134, 100th Cong. (1987); H.R. Res. 388, 100th Cong. (1988), and resolutions authorizing the committee to permit its counsel to take affidavits and depositions in both the Nixon and Hastings impeachments, *see* H.R. Res. 562, 100th Cong. (1988) (Nixon); H.R. Res. 320, 100th Cong. (1987) (Hastings).

31. In the post-1989 era, as before, most of the impeachment resolutions against judges that were referred to the Judiciary Committee did not result in any further investigation. *See, e.g.*, H.R. Res. 916, 109th Cong. (2006) (Manuel Real); H.R. Res. 207, 103d Cong. (1993) (Robert Collins); H.R. Res. 177, 103d Cong. (1993) (Robert Aguilar); H.R. Res. 176, 103d Cong. (1993) (Robert Collins).

32. Unlike the House, ''the Senate treats its rules as remaining in effect continuously from one Congress to the next without having to be re-adopted.'' Richard S. Beth, Cong. Research Serv., R42929, *Procedures for Considering Changes in Senate Rules* 9 (Jan. 22, 2013). Of course, like the House, the Senate may change its rules by simple resolution.

33. Nor do the Rules otherwise give the Speaker the authority to order an investigation or issue a subpoena in connection with impeachment. Rule I sets out the powers of the Speaker. She ''shall sign . . . all writs, warrants, and subpoenas of, or issued by order of, the House.'' Rule I, cl. 4. But that provision applies only when the House itself issues an order. *See Jefferson's Manual* § 626, at 348.

34. Clause 2(m) of Rule XI was initially adopted on October 8, 1974, and took effect on January 3, 1975. *See* H.R. Res. 988, 93d Cong. The rule appears to have remained materially unchanged from 1975 to the present (including during the time of the Clinton investigation). *See* H.R. Rule XI, cl. 2(m), 105th Cong. (Jan. 1, 1998) (version in effect during the Clinton investigation); *Jefferson's Manual* § 805, at 586–89 (reprinting current version and describing the provision's evolution).

35. At the start of the 93rd Congress in 1973, the Judiciary Committee was ''authorized to conduct full and complete studies and investigations and make inquiries within its jurisdiction as set forth in [the relevant provision] of the Rules of the House of Representatives'' and was empowered ''to hold such hearings and require, by subpena or otherwise, the attendance and testimony of such witnesses and the production of such books, records, correspondence, memorandums, papers, and documents, as it deems necessary.'' H.R. Res. 74, 93d Cong. §§ 1, 2(a) (1973); *see also* Cong. Research Serv., R45769, *The Impeachment Process in the House of Representatives* 4 (updated Nov. 14, 2019) (noting that, before Rule XI vested subpoena power in standing committees, the Judiciary Committee and other committees had often been given subpoena authority ''through resolutions providing blanket investigatory authorities that were agreed to at the start of a Congress'').

36. The Judiciary Committee has also invoked House Resolution 430 as an independent source of authority for an impeachment inquiry. *See* Tr. of Mot. Hrg. at 91–92, *In re Application of the Comm. on the Judiciary; see also* Majority Staff of H. Comm. on the Judiciary, 116th Cong., *Constitutional Grounds for Presidential Impeachment* 39 (Dec. 2019). As discussed above, however, that resolution did not confer any investigative authority. Rather, it granted ''any and all necessary authority under Article I'' only ''in connection with'' certain ''judicial proceeding[s]'' in federal court. H.R. Res. 430, 116th Cong. (2019); *see supra* note 7. The resolution therefore had no bearing on any committee's authority to compel the production of documents or testimony in an impeachment investigation.

37. Even if the House had sought to ratify a previously issued subpoena, it could give that subpoena only prospective effect. As discussed above, the Supreme Court has recognized that the House may not cite a witness for contempt for failure to comply with a subpoena unsupported by a valid delegation of authority at the time it was issued. *See Rumely*, 345 U.S. at 48; *see also Exxon*, 589 F.2d at 592 (''To issue a valid subpoena, . . . a committee or subcommittee must conform strictly to the resolution establishing its investigatory powers[.]'').

38. The letters accompanying other subpoenas, *see supra* note 9, contained similar threats that the recipients' ''failure or refusal to comply with the subpoena, including at the direction or behest of the President,'' would constitute ''evidence of obstruction of the House's impeachment inquiry.''

39. *See, e.g., Attempted Exclusion of Agency Counsel from Congressional Depositions of Agency Employees*, 43 Op. O.L.C. __, at *14 (May 23, 2019) (''[I]t would be unconstitutional to enforce a subpoena against an agency employee who declined to appear before Congress, at the agency's direction, because the committee would not permit an agency representative to accompany him.''); *Testimonial Immunity Before Congress of the Former Counsel to the President*, 43 Op. O.L.C. __, at *20 (May 20, 2019) (''The constitutional separation of powers bars Congress from exercising its inherent contempt power in the face of a presidential assertion of executive privilege.''); *Whether the Department of Justice May Prosecute White House Officials for Contempt of Congress*, 32 Op. O.L.C. 65, 65–69 (2008) (concluding that the Department cannot take ''prosecutorial action, with respect to current or former White House officials who . . . declined to appear to testify, in response to subpoenas from a congressional committee, based on the President's assertion of executive privilege''); *Application of 28 U.S.C. § 458 to Presidential Appointments of Federal Judges*, 19 Op. O.L.C. 350, 356 (1995) (''[T]he criminal contempt of Congress statute does not apply to the President or presidential subordinates who assert executive privilege.''); *see also Authority of Agency Officials to Prohibit Employees from Providing Information to Congress*, 28 Op. O.L.C. 79, 80–82 (2004) (explaining that the Executive Branch has the constitutional authority to supervise its employees' disclosure of privileged and other information to Congress).

APPENDIX D

LETTER OPINIONS FROM THE OFFICE OF LEGAL COUNSEL TO COUNSEL TO THE PRESIDENT REGARDING ABSOLUTE IMMUNITY OF THE ACTING CHIEF OF STAFF, LEGAL ADVISOR TO THE NATIONAL SECURITY COUNSEL, AND DEPUTY NATIONAL SECURITY ADVISOR

U.S. DEPARTMENT OF JUSTICE,
OFFICE OF LEGAL COUNSEL,
Washington, DC, October 25, 2019.

PAT A. CIPOLLONE,
Counsel to the President, The White House, Washington, DC.

DEAR MR. CIPOLLONE: Today, the Permanent Select Committee on Intelligence of the House of Representatives issued a subpoena seeking to compel Charles Kupperman, former Assistant to the President and Deputy National Security Advisor, to testify on Monday, October 28. The Committee subpoenaed Mr. Kupperman as part of its purported impeachment inquiry into the conduct of the President. The Administration has previously explained to the Committee that the House has not authorized an impeachment inquiry, and therefore, the Committee may not compel testimony in connection with the inquiry. Setting aside the question whether the inquiry has been lawfully authorized, you have asked whether the Committee may compel Mr. Kupperman to testify even assuming an authorized subpoena. We conclude that he is absolutely immune from compelled congressional testimony in his capacity as a former senior adviser to the President.

The Committee seeks Mr. Kupperman's testimony about matters related to his official duties at the White House. We understand that Committee staff informed Mr. Kupperman's private counsel that the Committee wishes to question him about the telephone call between President Trump and the President of Ukraine that took place on July 25, 2019, during Mr. Kupperman's tenure as a presidential adviser, and related matters. *See ''Urgent Concern'' Determination by the Inspector General of the Intelligence Community*, 43 Op. O.L.C. __, at *1–3 (Sept. 3, 2019) (discussing the July 25 telephone call).

The Department of Justice has for decades taken the position, and this Office recently reaffirmed, that ''Congress may not constitutionally compel the President's senior advisers to testify about their official duties.'' *Testimonial Immunity Before Congress of the Former Counsel to the President*, 43 Op. O.L.C. ____, at *1 (May 20, 2019) (''*Immunity of the Former Counsel*''). This testimonial immunity is rooted in the separation of powers and derives from the President's status as the head of a separate, co-equal branch of government. *See id* at *3–7. Because the President's closest advisers serve as his alter egos, compelling them to testify would undercut the ''independence and autonomy'' of the Presidency, *id.* at *4, and interfere directly with the President's ability to faithfully discharge his responsibilities. Absent immunity, ''congressional committees could wield their compulsory power to attempt to supervise the President's actions, or to harass those advisers in an effort to influence their conduct, retaliate for actions the committee disliked, or embarrass and weaken the President for partisan gain.'' *Immunity of the Assistant to the President and Director of the Office of Political Strategy and Outreach From Congressional Subpoena*, 38 Op. O.L.C. __, at *3 (July 15, 2014). Congressional questioning of the President's senior advisers would also undermine the independence and candor of executive branch deliberations. *See Immunity of the Former Counsel*, 43 Op. O.L.C. at *5–7. Administrations of both political parties have insisted on the immunity of senior presidential advisers, which is critical to protect the institution of the Presidency. *Assertion of Executive Privilege with Respect to Clemency Decision*, 23 Op. O.L.C. 1, 5 (1999) (A.G. Reno).

Mr. Kupperman qualifies as a senior presidential adviser entitled to immunity. The testimonial immunity applies to the President's ''immediate advisers—that is, those who customarily meet with the President on a regular or frequent basis.'' Memorandum for John D. Ehrlichman, Assistant to the President for Domestic Affairs, from William H. Rehnquist, Assistant Attorney General, Office of Legal Counsel, *Re: Power of Congressional Committee to Compel Appearance or Testimony of ''White House Staff''* at 7 (Feb. 5, 1971). Your office has informed us that Mr. Kupperman served as the sole deputy to National Security Advisor John R. Bolton, and briefly served as Acting National Security Advisor after Mr. Bolton's departure. As Deputy National Security Advisor, Mr. Kupperman generally met with the President multiple times per week to advise him on a wide range of national security matters, and he met with the President even more often

during the frequent periods when Mr. Bolton was traveling. Mr. Kupperman participated in sensitive internal deliberations with the President and other senior advisers, maintained an office in the West Wing of the White House, traveled with the President on official trips abroad on multiple occasions, and regularly attended the presentation of the President's Daily Brief and meetings of the National Security Council presided over by the President.

Mr. Kupperman's immunity from compelled testimony is strengthened because his duties concerned national security. The Supreme Court held in *Harlow* v. *Fitzgerald*, 457 U.S. 800 (1982), that senior presidential advisers do not enjoy absolute immunity from civil liability—a holding that, as we have previously explained, does not conflict with our recognition of absolute immunity from compelled congressional testimony for such advisers, *see*, *e.g.*, *Immunity of the Former Counsel*, 43 Op. O.L.C. at *13–14. Yet the *Harlow* Court recognized that ''[f]or aides entrusted with discretionary authority in such sensitive areas as national security or foreign policy,'' even absolute immunity from suit ''might well be justified to protect the unhesitating performance of functions vital to the national interest.'' 457 U.S. at 812; *see also id.* at 812 n.19 (''a derivative claim to Presidential immunity would be strongest in such 'central' Presidential domains as foreign policy and national security, in which the President could not discharge his singularly vital mandate without delegating functions nearly as sensitive as his own'').

Immunity is also particularly justified here because the Committee apparently seeks Mr. Kupperman' s testimony about the President's conduct of relations with a foreign government. The President has the constitutional responsibility to conduct diplomatic relations, *see Assertion of Executive Privilege for Documents Concerning Conduct of Foreign Affairs with Respect to Haiti*, 20 Op. O.L.C. 5, 7 (1996) (A.G. Reno), and as a result, the President has the ''exclusive authority to determine the time, scope, and objectives of international negotiations.'' *Unconstitutional Restrictions on Activities of the Office of Science and Technology Policy in Section 1340(a) of the Department of Defense and Full-Year Continuing Appropriations Act, 2011*, 35 Op. O.L.C. __, at *4 (Sept. 19, 2011) (quotation marks omitted). Compelling testimony about these sensitive constitutional responsibilities would only deepen the very concerns—about separation of powers and confidentiality—that underlie the rationale for testimonial immunity. *See New York Times Co.* v. *United States*, 403 U.S. 713, 728 (1971) (Stewart, J., concurring) (''[I]t is elementary that the successful conduct of international diplomacy and the maintenance of an effective national defense require both confidentiality and secrecy.'').

Finally, it is inconsequential that Mr. Kupperman is now a private citizen. *In Immunity of the Former Counsel*, we reaffirmed that for purposes of testimonial immunity, there is ''no material distinction'' between ''current and former senior advisers to the President,'' and therefore, an adviser's departure from the White House staff ''does not alter his immunity from compelled congressional testimony on matters related to his service to the President.'' 43 Op. O.L.C. at *16; *see also Immunity of the Former Counsel to the President from Compelled Congressional Testimony*, 31 Op. O.L.C. 191, 192–93 (2007). It is sufficient that the Committee seeks Mr. Kupperman's testimony on matters related to his official duties at the White House.

Please let us know if we may be of further assistance.

STEVEN A. ENGEL,
Assistant Attorney General.

U.S. DEPARTMENT OF JUSTICE,
OFFICE OF LEGAL COUNSEL,
Washington, DC, November 3, 2019.

PAT A. CIPOLLONE,
Counsel to the President, The White House, Washington, DC.

DEAR MR. CIPOLLONE: On November 1, 2019, the Permanent Select Committee on Intelligence of the House of Representatives issued a subpoena seeking to compel John Eisenberg to testify at a deposition on Monday, November 4. Mr. Eisenberg serves as Assistant to the President, Deputy Counsel to the President for National Security Affairs, and Legal Advisor to the National Security Council. The Committee subpoenaed Mr. Eisenberg as part of its impeachment inquiry into the conduct of the President. *See* H.R. Res. 660, 116th Cong. (2019). You have asked whether the Committee may compel Mr. Eisenberg to testify. We conclude that he is absolutely immune from compelled congressional testimony in his capacity as a senior adviser to the President.

The Committee has made clear that it seeks to question Mr. Eisenberg about matters related to his official duties at the White House. The Committee informed him that it is investigating the President's conduct of foreign relations with Ukraine and that it believes, ''[b]ased upon public reporting and evidence gathered as part of the impeachment inquiry,'' that Mr. Eisenberg has ''information relevant to these matters.'' Letter for John Eisenberg from Adam B. Schiff, Chairman, House Permanent Select Committee on Intelligence, et al. at 1 (Oct. 30, 2019); *see also* Letter for John Eisenberg from Adam B. Schiff, Chairman, House Permanent Select Committee on Intelligence, et al. at 1 (Nov. 1, 2019).

The Executive Branch has taken the position for decades that ''Congress may not constitutionally compel the President's senior advisers to testify about their official duties.'' *Testimonial Immunity Before Congress of the Former Counsel to the President*, 43 Op. O.L.C. __, at *1 (May 20, 2019) (''*Immunity of the Former Counsel*''). This testimonial immunity is rooted in the separation of powers and derives from the President's status as the head of a separate, co-equal branch of government. *See id.* at *3–7. Because the President's closest advisers serve as his alter egos, compelling them to testify would undercut the ''independence and autonomy'' of the Presidency, *id.* at *4, and interfere directly with the President's ability to faithfully discharge his constitutional responsibilities. Absent immunity, ''congressional committees could wield their compulsory power to attempt to supervise the President's actions, or to harass those advisers in an effort to influence their conduct, retaliate for actions the committee disliked, or embarrass and weaken the President for partisan gain.'' *Immunity of the Assistant to the President and Director of the Office of Political Strategy and Outreach From Congressional Subpoena*, 38 Op. O.L.C. __, at *3 (July 15, 2014) (''*Immunity of the Assistant to the President*''). Congressional questioning of the President's senior advisers would also undermine the independence and candor of executive branch deliberations. *See Immunity of the Former Counsel*, 43 Op. O.L.C. at *5–7. For these reasons, the Executive Branch has long recognized the immunity of senior presidential advisers to be critical to protecting the institution of the Presidency.

This testimonial immunity applies in an impeachment inquiry just as it applies in a legislative oversight inquiry. As our Office recently advised you, executive privilege remains available when a congressional committee conducts an impeachment investigation. *See* Letter for Pat A. Cipollone, Counsel to the President, from Steven A. Engel, Assistant Attorney General, Office of Legal Counsel at 2 & n.1 (Nov. 1, 2019). The testimonial immunity of senior presidential advisers is ''broader'' than executive privilege and exists in part to prevent the inadvertent disclosure of privileged information, *Immunity of the Former Counsel*, 43 Op. O.L.C. at *4, *6, so it follows that testimonial immunity also continues to apply in the impeachment context. More importantly, the commencement of an impeachment inquiry only heightens the need to safeguard the separation of powers and preserve the ''independence and autonomy'' of the Presidency—the principal concerns underlying testimonial immunity. *Id.* at *4. Even when impeachment proceedings are underway, the President must remain able to continue to discharge the duties of his office. The testimonial immunity of the President's senior advisers remains an important limitation to protect the independence and autonomy of the President himself.

We do not doubt that there may be impeachment investigations in which the House will have a legitimate need for information possessed by the President's senior advisers, but the House may have a legitimate need in a legislative oversight inquiry. In both instances, the testimonial immunity of the President's senior advisers will not prevent the House from obtaining information from other available sources. The immunity of those immediate advisers will not itself prevent the House from obtaining testimony from others in the Executive Branch, including in the White House, or from obtaining pertinent documents (although the House may still need to overcome executive privilege with respect to testimony and documents to which the privilege applies). In addition, the President may choose to authorize his senior advisers to provide testimony because ''the benefit of providing such testimony as an accommodation to a committee's interests outweighs the potential for harassment and harm to Executive Branch confidentiality.'' *Immunity of the Assistant to the President*, 38 Op. O.L.C. at *4 n.2. Accordingly, our recognition that the immunity applies to an impeachment inquiry does not preclude the House from obtaining information from other sources.

We next consider whether Mr. Eisenberg qualifies as a senior presidential adviser. The testimonial immunity applies to the President's ''immediate advisers—that is, those who customarily meet with the President on a regular or frequent basis.'' Memorandum for John D. Ehrlichman, Assistant to the President for Domestic Affairs, from William H. Rehnquist, Assistant Attorney General, Office of Legal Counsel, *Re: Power of Congressional Committee to Compel Appearance or Testimony of ''White House Staff''* at 7 (Feb. 5, 1971). We believe that Mr. Eisenberg meets that definition. Mr. Eisenberg has served as an adviser to the President on sensitive legal and national security matters since the first day of the Administration, and his direct relationship with the President has grown over time. Your office has informed us that he regularly meets with the President multiple times each week, frequently in very small groups, and often communicates with the President multiple times per day. He is one of a small number of advisers who are authorized to contact the President directly, and the President directly seeks his advice. Mr. Eisenberg is therefore the kind of immediate presidential adviser that the Executive Branch has historically considered immune from compelled congressional testimony.

Mr. Eisenberg's eligibility for immunity is particularly justified because his duties concern national security. The Supreme Court held in *Hurluw* v. *Fitzgerald*, 457 U.S. 800 (1982), that senior presidential advisers do

not enjoy absolute immunity from civil liability—a holding that, as we have previously explained, does not conflict with our recognition of absolute immunity from compelled congressional testimony for such advisers, *see Immunity of the Assistant to the President*, 38 Op. O.L.C. at *5–9. Yet the *Harlow* Court recognized that ''[f]or aides entrusted with discretionary authority in such sensitive areas as national security or foreign policy,'' even absolute immunity from suit ''might well be justified to protect the unhesitating performance of functions vital to the national interest.'' 457 U.S. at 812; *see also id.* at 812 n.19 (''a derivative claim to Presidential immunity would be strongest in such 'central' Presidential domains as foreign policy and national security, in which the President could not discharge his singularly vital mandate without delegating functions nearly as sensitive as his own'').

Moreover, the Committee seeks Mr. Eisenberg's testimony about the President's conduct of relations with a foreign government. The President has the constitutional responsibility to conduct diplomatic relations, *see Assertion of Executive Privilege for Documents Concerning Conduct of Foreign Affairs with Respect to Haiti*, 20 Op. O.L.C. 5, 7 (1996) (A.G. Reno), and as a result, the President has the ''exclusive authority to determine the time, scope, and objectives of international negotiations.'' *Unconstitutional Restrictions on Activities of the Office of Science and Technology Policy in Section 1340(a) of the Department of Defense and Full-Year Continuing Appropriations Act*, 2011, 35 Op. O.L.C. __, at *4 (Sept. 19, 2011) (quotation marks omitted). Compelling testimony about these sensitive constitutional responsibilities would only deepen the very concerns—about separation of powers and confidentiality—that underlie the rationale for testimonial immunity. *See New York Times Co.* v. *United States*, 403 U.S. 713, 728 (1971) (Stewart, J., concurring) (''[I]t is elementary that the successful conduct of international diplomacy and the maintenance of an effective national defense require both confidentiality and secrecy.'').

Please let us know if we may be of further assistance.

STEVEN A. ENGEL,
Assistant Attorney General.

U.S. DEPARTMENT OF JUSTICE,
OFFICE OF LEGAL COUNSEL,
Washington, DC, November 7, 2019.

PAT A. CIPOLLONE,
Counsel to the President, The White House, Washington, DC.

DEAR MR. CIPOLLONE: On November 7, 2019, the Permanent Select Committee on Intelligence of the House of Representatives issued a subpoena seeking to compel Mick Mulvaney, Assistant to the President and Acting White House Chief of Staff, to testify at a deposition on Friday, November 8. The Committee subpoenaed Mr. Mulvaney as part of its impeachment inquiry into the conduct of the President. See H.R. Res. 660, 116th Cong. (2019). You have asked whether the Committee may compel him to testify. We conclude that Mr. Mulvaney is absolutely immune from compelled congressional testimony in his capacity as a senior adviser to the President.

The Executive Branch has taken the position for decades that ''Congress may not constitutionally compel the President's senior advisers to testify about their official duties.'' *Testimonial Immunity Before Congress ofthe Former Counsel to the President*, 43 Op. O.L.C. __, at *1 (May 20, 2019). The immunity applies to those ''immediate advisers . . . who customarily meet with the President on a regular or frequent basis.'' Memorandum for John D. Ehrlichman, Assistant to the President for Domestic Affairs, from William H. Rehnquist, Assistant Attorney General, Office of Legal Counsel, *Re: Power of Congressional Committee to Compel Appearance or Testimony of ''White House Staff''* at 7 (Feb. 5, 1971) (''Rehnquist Memorandum''). We recently advised you that this immunity applies in an impeachment inquiry just as in a legislative oversight inquiry. *See* Letter for Pat A. Cipollone, Counsel to the President, from Steven A. Engel, Assistant Attorney General, Office of Legal Counsel at 2 (Nov. 3, 2019). ''Even when impeachment proceedings are underway,'' we explained, ''the President must remain able to continue to discharge the duties of his office. The testimonial immunity of the President's senior advisers remains an important limitation to protect the independence and autonomy ofthe President himself.'' *Id.*

This immunity applies in connection with the Committee's subpoena for Mr. Mulvaney's testimony. The Committee intends to question Mr. Mulvaney about matters related to his official duties at the White House—specifically the President's conduct of foreign relations with Ukraine. *See* Letter for Mick Mulvaney from Adam B. Schiff, Chairman, House Permanent Select Committee on Intelligence, et al. (Nov. 5, 2019). And Mr. Mulvaney, as Acting Chief of Staff, is a ''top presidential adviser[],'' *In re Sealed Case*, 121 F.3d 729, 757 (D.C. Cir. 1997), who works closely with the President in supervising the staff within the Executive Office ofthe President and managing the advice the President receives. *See* David B. Cohen & Charles E. Walcott, White House Transition Project, Report 2017–21, *The Office of Chief of Staff* 15–26 (2017). Mr. Mulvaney meets with and advises the President on a daily basis about the most sensitive issues confronting the government. Thus, he readily qualifies as an ''immediate adviser[]'' who may not be compelled to testify before Congress. Rehnquist Memorandum at 7.

This conclusion also follows from this Office's prior recognition that certain Deputy White House Chiefs of Staff were immune from compelled congressional testimony. *See* Letter for Pat A. Cipollone, Counsel to the President, from Steven A. Engel, Assistant Attorney General, Office ofLegal Counsel (Sept. 16, 2019) (former Deputy Chief of Staff for Policy Implementation Rick Dearborn); Letter for Fred F. Fielding, Counsel to the President, from Steven G. Bradbury, Principal Deputy Assistant Attorney General, Office of Legal Counsel (Aug. 1, 2007) (*Deputy* White House Chief of Staff Karl Rove). In addition, as we have noted with respect to other recently issued subpoenas, testimonial immunity is particularly justified because the Committee seeks Mr. Mulvaney's testimony about the President's conduct of relations with a foreign government. *See, e.g.*, Letter for Pat A. Cipollone, Counsel to the President, from Steven A. Engel, Assistant Attorney General, Office of Legal Counsel at 2–3 (Oct. 25, 2019); *see also Harlow* v. *Fitzgerald*, 457 U.S. 800, 812 n.19 (1982) (''[A] derivative claim to Presidential immunity would be strongest in such 'central' Presidential domains as foreign policy and national security, in which the President could not discharge his singularly vital mandate without delegating functions nearly as sensitive as his own.'').

Please let us know if we may be of further assistance.

STEVEN A. ENGEL,
Assistant Attorney General.

[IN PROCEEDINGS BEFORE THE UNITED STATES SENATE]

TRIAL MEMORANDUM OF PRESIDENT DONALD J. TRUMP

January 20, 2020.

[In the Senate of the United States Sitting as a Court of Impeachment]

In re Impeachment of President Donald J. Trump

REPLICATION OF THE UNITED STATES HOUSE OF REPRESENTATIVES TO THE ANSWER OF PRESIDENT DONALD J. TRUMP TO THE ARTICLES OF IMPEACHMENT

The House of Representatives, through its Managers and counsel, replies to the Answer of President Donald J. Trump as follows:

PREAMBLE

The House denies each and every allegation and defense in the Preamble to the Answer.

The American people entrusted President Trump with the extraordinary powers vested in his Office by the Constitution, powers which he swore a sacred Oath to use for the Nation's benefit. President Trump broke that promise. He used Presidential powers to pressure a vulnerable foreign partner to interfere in our elections for his own benefit. In doing so, he jeopardized our national security and our democratic self-governance. He then used his Presidential powers to orchestrate a cover-up unprecedented in the history of our Republic: a complete and relentless blockade of the House's constitutional power to investigate high Crimes and Misdemeanors.

President Trump maintains that the Senate cannot remove him even if the House proves every claim in the Articles of impeachment. That is a chilling assertion. It is also dead wrong. The Framers deliberately drafted a Constitution that allows the Senate to remove Presidents who, like President Trump, abuse their power to cheat in elections, betray our national security, and ignore checks and balances. That President Trump believes otherwise, and insists he is free to engage in such conduct again, only highlights the continuing threat he poses to the Nation if allowed to remain in office.

Despite President Trump's stonewalling of the impeachment inquiry, the House amassed overwhelming evidence of his guilt. It did so through fair procedures rooted firmly in the Constitution and precedent. It extended President Trump protections equal to, or greater than, those afforded to Presidents in prior impeachment inquiries. To prevent President Trump's obstruction from delaying justice until after the very election he seeks to corrupt, the House moved decisively to adopt the two Articles of impeachment. Still, new evidence continues to emerge, all of which confirms these charges.

Now it is the Senate's duty to conduct a fair trial—fair for President Trump, and fair for the American people. Only if the Senate sees and hears all relevant evidence—only if it insists upon the whole truth—can it render impartial justice. That means the Senate should require the President to turn over the documents he is hiding. It should hear from witnesses, as it has done in every impeachment trial in American history; it especially should hear from witnesses the President blocked from testifying in the House. President Trump cannot have it both ways. His Answer directly disputes key facts. He must either surrender all evidence relevant to the facts he has disputed or concede the facts as charged. Otherwise, this impeachment trial will fall far short of the American system of justice.

President Trump asserts that his impeachment is a partisan ''hoax.'' He is wrong. The House duly approved Articles of impeachment because its Members swore Oaths to support and defend the Constitution against all threats, foreign and domestic. The House has fulfilled its constitutional duty. Now, Senators must honor their own Oaths by

holding a fair trial with all relevant evidence. The Senate should place truth above faction. And it should convict the President on both Articles.

ARTICLE I

The House denies each and every allegation in the Answer to Article I that denies the acts, knowledge, intent, or wrongful conduct charged against President Trump. The House states that each and every allegation in Article I is true, and that any affirmative defenses set forth in the Answer to Article I are wholly without merit. The House further states that Article I properly alleges an impeachable offense under the Constitution, is not subject to a motion to dismiss, and should be considered and adjudicated by the Senate sitting as a Court of Impeachment.

Article I charges President Trump with Abuse of Power. The President solicited and pressured a foreign nation, Ukraine, to help him cheat in the next Presidential election by announcing two investigations: the first into an American citizen who was also a political opponent of his; the second into a baseless conspiracy theory promoted by Russia that Ukraine, not Russia, interfered in the 2016 election. President Trump sought to coerce Ukraine into making these announcements by withholding two official acts: the release of desperately needed military aid and a vital White House meeting. There is overwhelming evidence of the charges in Article I, as set forth in the 111-page brief and statement of material facts that the House submitted on January 18, 2020.

In his Answer, the President describes ''several simple facts'' that prove he ''did nothing wrong.'' This is false. President Trump cites the record of his July 25, 2019 phone call with President Volodymyr Zelensky of Ukraine. But we have read the transcript and it confirms his guilt. It shows, first and foremost, that he solicited a foreign power to announce two politically motivated investigations that would benefit him personally. It also indicates that he linked these investigations to the release of military assistance: on the call, he responded to President Zelensky's inquiries about U.S. military support by pressing him to ''do us a favor though'' and pursue President Trump's desired political investigations. Astoundingly, the Answer claims that President Trump raised the issue of ''corruption'' during the July 25 call, but that word appears nowhere in the record of the call, despite the urging of his national security staff. In fact, President Trump did not care at all about Ukraine; he only cared about the ''big stuff'' that affected him personally, specifically the Biden investigation.

President Trump also points to statements by ''President Zelensky and other Ukrainian officials'' denying any impropriety. Yet there is clear proof that Ukrainian officials felt pressured by President Trump and grasped the corrupt nature of his scheme. For example, a Ukrainian national security advisor stated that President Zelensky ''is sensitive about Ukraine being taken seriously, not merely as an instrument in Washington domestic, reelection politics.'' As experts testified in the House, President Zelensky remains critically dependent on continued United States military and diplomatic support. He has powerful incentives to avoid angering President Trump.

President Trump places great weight on two of his own statements denying a *quid pro quo*. These are hardly convincing. One denial the President blurted out, unprompted, to Ambassador Gordon Sondland, but only after the White House had learned about a whistleblower complaint and the Washington Post had reported the President's corrupt scheme—in other words, after President Trump got caught. President Trump then demanded to Ambassador Sondland that Ukraine execute the very this-for-that corrupt exchange that is alleged in Article I. As to the second denial cited in the Answer, President Trump made this statement to Senator Ron Johnson also after having learned of the whistleblower complaint, while inexplicably refusing the Senator's urgent plea to release the military aid. In any event, these self-serving false statements are contradicted by all of the other evidence. They show a cover-up and consciousness of guilt, not a credible defense for the President.

Lastly, the President notes that he met with President Zelensky at the U.N. General Assembly and released the aid without Ukraine announcing the investigations. But he did so only after he was caught red-handed. And he still has not met with President Zelensky at the White House, which Ukraine has long sought to demonstrate United States support in the face of Russian aggression.

The Answer offers an unconvincing and implausible defense against the factual allegations in Article I. The ''simple facts'' that it recites confirm President Trump's guilt, not his innocence. Moreover, fairness demands that if the President wants to put the facts at issue, he must end his cover-up and provide the Senate with all of the relevant documents and testimony. He cannot deny facts established by overwhelming evidence while concealing additional relevant evidence.

The President also asserts that Article I does not state an impeachable offense. In his view, the American people are powerless to remove a President for corruptly using his Office to cheat in the next election by soliciting and coercing a foreign power to sabotage a rival and spread conspiracy theories helpful to the President. This is the argument of a monarch, with no basis in the Constitution.

Abuse of Power is an impeachable offense. The Framers made this clear, including Alexander Hamilton, James Madison, James Iredell, and Edmund Randolph. The Supreme Court has recognized as much, as did the House Judiciary Committee in President Richard Nixon's case.

When the Framers wrote the Impeachment Clause, they aimed it squarely at abuse of office for personal gain, betrayal of the national interest through foreign entanglements, and corruption of elections. President Trump has engaged in the trifecta of constitutional misconduct warranting removal. He is the Framers' worst nightmare come to life.

ARTICLE II

The House denies each and every allegation in the Answer to Article II that denies the acts, knowledge, intent, or wrongful conduct charged against President Trump. The House further states that each and every allegation in Article II is true, and that any affirmative defenses set forth in the Answer to Article II are wholly without merit. The House further states that Article II properly alleges an impeachable offense under the Constitution, is not subject to a motion to dismiss, and should be considered and adjudicated by the Senate sitting as a Court of Impeachment.

Article II charges President Trump with directing the categorical and indiscriminate defiance of every single subpoena served by the House in its impeachment inquiry. No President or other official in the history of the Republic has ever ordered others to defy an impeachment subpoena; Presidents Andrew Johnson, Richard Nixon, and Bill Clinton all allowed their most senior advisors to give testimony to Congressional investigators. Nor has any President or other official himself defied such a subpoena—except for President Nixon, who, like President Trump, faced an article of impeachment for Obstruction of Congress. Instead, Presidents have recognized that Congressional power is at its apex in an impeachment. As President James Polk stated: the ''power of the House'' in cases of impeachment ''would penetrate into the most secret recesses of the Executive Departments.''

President Trump's defenses are wrong. At his personal direction, nine officials refused subpoenas to testify and the White House, Office of Management and Budget, and Departments of State, Defense, and Energy all defied valid subpoenas for documents. The fact that President Trump caved to public pressure and released two call transcripts—which, in fact, expose his guilt—hardly amounts to ''transparency'' and does not mitigate his obstruction.

Nor is President Trump's Obstruction of Congress excused by his incorrect legal arguments.

First, the impeachment inquiry was properly authorized and Congressional subpoenas do not require a vote of the full House.

Second, President Trump's blanket and categorical defiance of the House stemmed from his unilateral decision not to ''participate'' in the impeachment investigation, not from any legal assertion.

Third, President Trump never actually asserted executive privilege, a limited doctrine that has never been accepted as a basis for defying impeachment subpoenas. The foreign affairs and national security setting of this impeachment does not require a different result here; it makes the President's obstruction all the more alarming. The Framers explicitly stated that betrayal involving foreign powers is a core impeachable offense. It follows that the House is empowered to investigate such abuses, as all 17 current and former Executive Branch officials who testified about these matters recognized.

Fourth, the President's invocation of ''absolute immunity'' fails because this fictional doctrine has been rejected by every court to consider it in similar circumstances; President Trump extended it far beyond any understanding by prior Presidents; and it offers no explanation for his across-the-board refusal to turn over every single document subpoenaed.

Finally, the President's lawyers have argued in court that it is constitutionally forbidden for the House to seek judicial enforcement of its subpoenas, even as they now argue in the Senate that the House is required to seek such enforcement. Again, President Trump would have it both ways: he argues simultaneously that the House must use the courts and that it is prohibited from using the courts. This duplicity is poor camouflage for the weakness of President Trump's legal arguments. More significantly, any judicial enforcement effort would have taken years to pursue. In granting the House the ''sole Power of Impeachment,'' along with the power to investigate grounds for impeachment, the Framers did not require the House to exhaust all alternative methods of obtaining evidence, especially when those alternatives would fail to deal with an immediate threat. To protect the Nation, the House had to act swiftly in addressing the clear and present danger posed by President Trump's misconduct.

President Trump engaged in a cover-up that itself establishes his consciousness of guilt. Innocent people seek to bring the truth to light. In contrast, President Trump has acted in the way that guilty people do when they are caught and fear the facts. But the stakes here are even higher than that. In completely obstructing an investigation into

his own misconduct, President Trump asserted the prerogative to nullify Congress's impeachment power itself. He placed himself above the law and eviscerated the separation of powers. This claim evokes monarchy and despotism. It has no place in our democracy, where even the highest official must answer to Congress and the Constitution.

CONCLUSION

The House denies each and every allegation and defense in the Conclusion to the Answer.

President Trump did not engage in this corrupt conduct to uphold the Presidency or protect the right to vote. He did it to cheat in the next election and bury the evidence when he got caught. He has acted in ways that prior Presidents expressly disavowed, while injuring our national security and democracy. And he will persist in that misconduct—which he deems ''perfect''—unless and until he is removed from office. The Senate should do so following a fair trial.

Respectfully submitted,

United States House of Representatives

ADAM B. SCHIFF,
JERROLD NADLER,
ZOE LOFGREN,
HAKEEM S. JEFFRIES,
VAL BUTLER DEMINGS,
JASON CROW,
SYLVIA R. GARCIA,
U.S. House of Representatives Managers.

January 20, 2020.

[In the Senate of the United States Sitting as a Court of Impeachment]

In re Impeachment of President Donald J. Trump

REPLY MEMORANDUM OF THE UNITED STATES HOUSE OF REPRESENTATIVES IN THE IMPEACHMENT TRIAL OF PRESIDENT DONALD J. TRUMP

INTRODUCTION

President Trump's brief confirms that his misconduct is indefensible. To obtain a personal political ''favor'' designed to weaken a political rival, President Trump corruptly pressured the newly elected Ukrainian President into announcing two sham investigations. As leverage against Ukraine in his corrupt scheme, President Trump illegally withheld hundreds of millions of dollars in security assistance critical to Ukraine's defense against Russian aggression, as well as a vital Oval Office meeting. When he got caught, President Trump sought to cover up his scheme by ordering his Administration to disclose no information to the House of Representatives in its impeachment investigation. President Trump's efforts to hide his misdeeds continue to this day, as do his efforts to solicit foreign interference. President Trump must be removed from office now because he is trying to cheat his way to victory in the 2020 Presidential election, and thereby undermine the very foundation of our democratic system.

President Trump's lengthy brief to the Senate is heavy on rhetoric and procedural grievances, but entirely lacks a legitimate defense of his misconduct. It is clear from his response that President Trump would rather discuss anything other than what he actually did. Indeed, the first 80 pages of his brief do not meaningfully attempt to defend his conduct—because there is no defense for a President who seeks foreign election interference to retain power and then attempts to cover it up by obstructing a Congressional inquiry. The Senate should swiftly reject President Trump's bluster and evasion, which amount to the frightening assertion that he may commit whatever misconduct he wishes, at whatever cost to the Nation, and then hide his actions from the representatives of the American people without repercussion.

First, President Trump's argument that abuse of power is not an impeachable offense is wrong—and dangerous. That argument would mean that, even accepting that the House's recitation of the facts is correct—which it is—the House lacks authority to remove a President who sells out our democracy and national security in exchange for a personal political favor. The Framers of our Constitution took pains to ensure that such egregious abuses of power would be impeachable. They specifically rejected a proposal to limit impeachable offenses to treason and bribery and included the term ''other high Crimes and Misdemeanors.''[1]

There can be no reasonable dispute that the Framers would have considered a President's solicitation of a foreign country's election interference in exchange for critical American military and diplomatic support to be an impeachable offense. Nor can there be any dispute that the Framers would have recognized that allowing a President to prevent Congress from investigating his misconduct would nullify the House's ''sole Power of Impeachment.''[2] No amount of legal rhetoric can hide the fact that President Trump exemplifies why the Framers included the impeachment mechanism in the Constitution: to save the American people from these kinds of threats to our republic.

Second, President Trump's assertion that impeachable offenses must involve criminal conduct is refuted by two centuries of precedent and, if accepted, would have intolerable consequences. But this argument has not been accepted in previous impeachment proceedings and should not be accepted here. As one member of President Trump's legal team previously conceded, President Trump's theory would mean that the President could not be impeached even if he allowed an enemy power to invade and conquer American territory.[3] The absurdity of that argument demonstrates why every serious constitutional scholar to consider it—including the House Republicans' own legal expert—has rejected it.[4] The Framers intentionally did not tie ''high Crimes and Misdemeanors'' to the federal criminal code—which did not exist at the time of the Founding—but instead created impeachment to cover severe abuses of the public trust like those of President Trump.

Third, President Trump now claims that he had virtuous reasons for withholding from our ally Ukraine sorely needed security assistance and that there was no actual threat or reward as part of his proposed corrupt bargain. But the President's after-the-fact justifications for his illegal hold on security assistance cannot fool anybody. The reason President Trump jeopardized U.S. national security and the integrity of our elections is even more pernicious: he wanted leverage over Ukraine to obtain a personal, political favor that he hoped would bolster his reelection bid.

If withholding the security assistance to Ukraine had been a legitimate foreign policy act, then there is no reason President Trump's staff would have gone to such lengths to hide it, and no reason President Trump would have tried so hard to deny the obvious when it came to light. It is common sense that innocent people do not behave like President Trump did here. As his own Acting Chief of Staff Mick Mulvaney bluntly confessed and as numerous other witnesses confirmed, there was indeed a quid pro quo with Ukraine. The Trump Administration's message to the American people was clear: ''We do that all the time with foreign policy.''[5] Instead of embracing what his Acting Chief of Staff honestly disclosed, President Trump has tried to hide what the evidence plainly reveals: the Emperor has no clothes.

Fourth, President Trump's assertion that he has acted with ''transparency'' during this impeachment is yet another falsehood. In fact, unlike any of his predecessors, President Trump categorically refused to provide the House with any information and demanded that the entire Executive Branch coverup his misconduct. President Trump's subordinates fell in line.

Similarly wrong is the argument by President Trump's lawyers that his blanket claim of immunity from investigation should now be understood as a valid assertion of executive privilege—a privilege he never actually invoked. And President Trump's continued attempt to justify his obstruction by citing to constitutional separation of powers misunderstands the nature of an impeachment. His across-the-board refusal to provide Congress with information and his assertion that his own lawyers are the sole judges of Presidential privilege undermines the constitutional authority of the people's representatives and shifts power to an imperial President.

Fifth, President Trump's complaints about the House's impeachment procedures are meritless excuses. President Trump was offered an eminently fair process by the House and he will receive additional process during the Senate proceedings, which, unlike the House investigation, constitute an actual trial. As President Trump recognizes, the Senate must ''decide for itself all matters of law and fact.''[6]

The House provided President Trump with process that was just as substantial—if not more so—than the process afforded other Presidents who have been subject to an impeachment inquiry, including the right to call witnesses and present evidence. Because he had too much to hide, President Trump did not take advantage of what the House offered him and instead decided to shout from the sidelines—only to claim that the process he obstructed was unfair. President Trump's lengthy trial brief does not explain why, even now, he has not offered any documents or witnesses in his defense or provided any information in response to the House's repeated requests. This is not how an innocent person behaves. President Trump's process arguments are simply part of his attempt to cover up his wrongdoing and to undermine the House in the exercise of its constitutional duty.

Finally, President Trump's impeachment trial is an effort to safeguard our elections, not override them. His unsupported contentions to the contrary have it exactly backwards. President Trump has shown that he will use the immense powers of his office to manipulate the upcoming election to his own advantage. Respect for the integrity of this Nation's democratic process requires that President Trump be removed before he can corrupt the very election that would hold him accountable to the American people.

In addition, President Trump is wrong to suggest that the impeachment trial is an attempt to overturn the prior election. If the Senate convicts and removes President Trump from office, then the Vice President elected by the American people in 2016 will become the President.[7] The logic of President Trump's argument is that because he was elected once and stands for reelection again, he cannot be impeached no matter how egregiously he betrays his oath of office. This type of argument would not have fooled the Framers of our Constitution, who included impeachment as a check on Presidents who would abuse their office for personal gain, like President Trump.

The Framers anticipated that a President might one day seek to place his own personal

and political interests above those of our Nation, and they understood that foreign interference in our elections was one of the gravest threats to our democracy. The Framers also knew that periodic democratic elections cannot serve as an effective check on a President who seeks to manipulate the those elections. The ultimate check on Presidential misconduct was provided by the Framers through the power to impeach and remove a President—a power that the Framers vested in the representatives of the American people.

Indeed, on the eve of his impeachment trial, President Trump continues to insist that he has done nothing wrong. President Trump's view that he cannot be held accountable, except in an election he seeks to fix in his favor, underscores the need for the Senate to exercise its solemn constitutional duty to remove President Trump from office. If the Senate does not convict and remove President Trump, he will have succeeded in placing himself above the law. Each Senator should set aside partisanship and politics and hold President Trump accountable to protect our national security and democracy.

ARGUMENT

I. President Trump must be Removed for Abusing his Power

A. President Trump's Abuse of Power Is a Quintessential Impeachable Offense

President Trump contends that he can abuse his power with impunity—in his words, ''do whatever I want as President'' [8]—provided he does not technically violate a statute in the process. That argument is both wrong and remarkable. History, precedent, and the words of the Framers conclusively establish that serious abuses of power—offenses, like President Trump's, that threaten our democratic system—are impeachable.

President Trump's own misconduct illustrates the implications of his position. In President Trump's view, as long as he does not violate a specific statute, then the only check on his corrupt abuse of his office for his personal gain is the need to face reelection—even if the very goal of his abusive behavior is to cheat in that election. If President Trump were to succeed in his scheme and win a second and final term, he would face no check on his conduct. The Senate should reject that dangerous position.

1. *The Framers Intended Impeachment as a Remedy for Abuse of High Office.* President Trump appears to reluctantly concede that the fear that Presidents would abuse their power was among the key reasons that the Framers adopted an impeachment remedy.[9] But he contends that abuse of power was never intended to be an impeachable offense in its own right.[10]

President Trump's focus on the label to be applied to his conduct distracts from the fundamental point: His conduct is impeachable whether it is called an ''abuse of power'' or something else. The Senate is not engaged in an abstract debate about how to categorize the particular acts at issue; the question instead is whether President Trump's conduct is impeachable because it is a serious threat to our republic. For the reasons set forth in the House Manager's opening brief, the answer is plainly yes.

In any event, President Trump is wrong that abuses of power are not impeachable. The Framers focused on the toxic combination of corruption and foreign interference—what George Washington in his Farewell Address called ''one of the most baneful foes of republican government.'' [11] James Madison put it simply: The President ''might betray his trust to foreign powers.'' [12]

To the Framers, such an abuse of power was the quintessential impeachable conduct. They therefore rejected a proposal to limit impeachable offenses to only treason and bribery. They recognized the peril of setting a rigid standard for impeachment, and adopted terminology that would encompass what George Mason termed the many ''great and dangerous offenses'' that might ''subvert the Constitution.'' [13] The Framers considered and rejected as too narrow the word ''corruption,'' deciding instead on the term ''high Crimes and Misdemeanors'' because it would encompass the type of ''abuse or violation of some public trust''—the abuse of power—that President Trump committed here.[14]

2. *Impeachable Conduct Need Not Violate Established Law.* President Trump argues that a President's conduct is impeachable only if it violates a ''known offense defined in existing law.'' [15] That contention conflicts with constitutional text, Congressional precedents, and the overwhelming consensus of constitutional scholars.

The Framers borrowed the term ''high Crimes and Misdemeanors'' from British practice and state constitutions. As that term was applied in England, officials had long been impeached for non-statutory offenses, such as the failure to spend money allocated by Parliament, disobeying an order of Parliament, and appointing unfit subordinates.[16] The British understood impeachable offenses to be ''so various in their character, and so indefinable in their actual involutions, that it is almost impossible to provide systematically for them by positive law.'' [17]

American precedent confirms that the Impeachment Clause is not confined to a statutory code. The articles of impeachment against President Nixon turned on his abuse of power, rather than on his commission of a statutory offense. Many of the specific allegations set forth in those three articles did not involve any crimes. Instead, the House Judiciary Committee emphasized that President Nixon's conduct was ''undertaken for his own personal political advantage and not in furtherance of any valid national policy objective'' [18]—and expressly stated that his abuses of power warranted removal regardless whether they violated a specific statute.[19]

Previous impeachments were in accord. In 1912, for example, Judge Archibald was impeached and convicted for using his position to generate business deals with potential litigants in his court, even though this behavior had not been shown to violate any then-existing statute or laws regulating judges. The House Manager in the Archibald impeachment asserted that ''[t]he decisions of the Senate of the United States, of the various State tribunals which have jurisdiction over impeachment cases, and of the Parliament of England all agree that an offense, in order to be impeachable, need not be indictable either at common law or under any statute.'' [20] As early as 1803, Judge Pickering was impeached and then removed from office by the Senate for refusing to allow an appeal, declining to hear witnesses, and appearing on the bench while intoxicated and thereby ''degrading the honor and dignity of the United States.'' [21]

President Trump's argument conflicts with a long history of scholarly consensus, including among ''some of the most distinguished members of the [Constitutional] convention.'' [22] As a leading early treatise on the Constitution explained, impeachable offenses ''are not necessarily offences against the general laws . . . [for] [i]t is often found that offences of a very serious nature by high officers are not offences against the criminal code, but consist in abuses or betrayals of trust, or inexcusable neglects of duty.'' [23] In his influential 1833 treatise, Supreme Court Justice Joseph Story similarly explained that impeachment encompasses ''misdeeds . . . as peculiarly injure the commonwealth by the abuse of high offices of trust,'' whether or not those misdeeds violate existing statutes intended for other circumstances.[24] Story observed that the focus was not ''crimes of a strictly legal character,'' but instead ''what are aptly termed, political offences, growing out of personal misconduct, or gross neglect, or usurpation, or habitual disregard of the public interests, in the discharge of the duties of political office.'' [25]

The fact that impeachment is not limited to violations of ''established law'' reflects its basic function as a remedy reserved for office-holders who occupy special positions of trust and power. Statutes of general applicability do not address the ways in which those to whom impeachment applies may abuse their unique positions. Limiting impeachment only to those statutes would defeat its basic purpose.

Modern constitutional scholars overwhelmingly agree. That includes one of President Trump's own attorneys, who argued during President Clinton's impeachment: ''It certainly doesn't have to be a crime, if you have somebody who completely corrupts the office of president, and who abuses trust and who poses great danger to our liberty.'' [26] More recently, that attorney changed positions and now maintains that a President cannot be impeached even for allowing a foreign sovereign to conquer an American State.[27] The absurdity of that argument helps explain why it has been so uniformly rejected.

Even if President Trump were correct that the Impeachment Clause covers only conduct that violates established law, his argument would fail. President Trump concedes that ''high crimes and misdemeanors'' encompasses conduct that is akin to the terms that precede it in the Constitution—treason and bribery.[28] And there can be no reasonable dispute that his misconduct is closely akin to bribery. ''The corrupt exercise of power in exchange for a personal benefit defines impeachable bribery.'' [29] Here, President Trump conditioned his performance of a required duty (disbursement of Congressionally appropriated aid funds to Ukraine) on the receipt of a personal benefit (the announcement of investigations designed to skew the upcoming election in his favor). This conduct carries all the essential qualities of bribery under common law and early American precedents familiar to the Framers.[30] It would be all the more wrong in their view because it involves a solicitation to a foreign government to manipulate our democratic process. And President Trump did actually violate an ''established law'': the Impoundment Control Act.[31] Thus, even under his own standard, President Trump's conduct is impeachable.

3. *Corrupt Intent May Render Conduct an Impeachable Abuse of Power.* President Trump next contends that the Impeachment Clause does not encompass any abuse of power that turns on the President's reasons for acting. Thus, according to President Trump, if he could perform an act for legitimate reasons, then he necessarily could perform the same act for corrupt reasons.[32] That argument is obviously wrong.

The Impeachment Clause itself forecloses President Trump's argument. The specific offenses enumerated in that Clause—bribery and treason—both turn on the subjective intent of the actor. Treason requires a ''disloyal mind'' and bribery requires corrupt intent.[33] Thus, a President may form a military alliance with a foreign nation because he believes that doing so is in the Nation's strategic interests, but if the President forms that same alliance for the purpose of taking up arms and overthrowing the Congress, his conduct is treasonous. Bribery

turns on similar considerations of corrupt intent. And, contrary to President Trump's assertion, past impeachments have concerned ''permissible conduct that had been simply done with the wrong subjective motives.'' [34] The first and second articles of impeachment against President Nixon, for example, charged him with using the powers of his office with the impermissible goals of obstructing justice and targeting his political opponents—in other words, for exercising Presidential power based on impermissible reasons.[35]

There are many acts that a President has ''objective'' authority to perform that would constitute grave abuses of power if done for corrupt reasons. A President may issue a pardon because the applicant demonstrates remorse and meets the standards for clemency, but if a President issued a pardon in order to prevent a witness from testifying against him, or in exchange for campaign donations, or for other corrupt motives, his conduct would be impeachable—as our Supreme Court unanimously recognized nearly a century ago.[36] The same principle applies here.

B. The House Has Proven that President Trump Corruptly Pressured Ukraine to Interfere in the Presidential Election for His Personal Benefit

President Trump withheld hundreds of millions of dollars in military aid and an important Oval Office meeting from Ukraine, a vulnerable American ally, in a scheme to extort the Ukrainian government into announcing investigations that would help President Trump and smear a potential rival in the upcoming U.S. Presidential election. He has not come close to justifying that misconduct.

1. President Trump principally maintains that he did not in fact condition the military aid and Oval Office meeting on Ukraine's announcement of the investigations—repeatedly asserting that there was ''no quid pro quo.'' [37] The overwhelming weight of the evidence refutes that assertion. And President Trump has effectively muzzled witnesses who could shed additional light on the facts.

Although President Trump argues that he ''did not make any connection between the assistance and any investigation,'' [38] his own Acting Chief of Staff, Mick Mulvaney, admitted the opposite during a press conference—conceding that the investigation into Ukrainian election interference was part of ''why we held up the money.'' [39] After a reporter inquired about this concession of a quid pro quo, Mr. Mulvaney replied, ''[W]e do that all the time with foreign policy,'' added, ''get over it,'' and then refused to explain these statements by testifying in response to a House subpoena.[40] The President's brief does not even address Mr. Mulvaney's admission. Ambassador Taylor also acknowledged the quid pro quo, stating, ''I think it's crazy to withhold security assistance for help with a political campaign.'' [41] And Ambassador Sondland testified that the existence of a quid pro quo regarding the security assistance was as clear as ''two plus two equals four.'' [42] President Trump's lawyers also avoid responding to these statements.

The same is true of the long-sought Oval Office meeting. As Ambassador Sondland testified: ''I know that members of this committee frequently frame these complicated issues in the form of a simple question: Was there a quid pro quo?'' He answered that, ''with regard to the requested White House call and the White House meeting, the answer is yes.'' [43] Ambassador Taylor reaffirmed the existence of a quid pro quo regarding the Oval Office meeting, testifying that ''the meeting President Zelensky wanted was conditioned on the investigations of Burisma and alleged Ukrainian interference in the 2016 U.S. elections.'' [44] Other witnesses testified similarly.[45]

President Trump's principal answer to this evidence is to point to two conversations in which he declared to Ambassador Sondland and Senator Ron Johnson that there was ''no quid pro quo.'' [46] Both conversations occurred after the President had been informed of the whistleblower complaint against him, at which point he obviously had a strong motive to come up with seemingly innocent cover stories for his misconduct.

In addition, President Trump's brief omits the second half of what he told Ambassador Sondland during their call. Immediately after declaring that there was ''no quid pro quo,'' the President insisted that ''President Zelensky must announce the opening of the investigations and he should want to do it.'' [47] President Trump thus conveyed that President Zelensky ''must'' announce the sham investigations in exchange for American support—the very definition of a quid pro quo, notwithstanding President Trump's self-serving, false statement to the contrary. Indeed that statement shows his consciousness of guilt.

President Trump also asserts that there cannot have been a quid pro quo because President Zelensky and other Ukrainian officials have denied that President Trump acted improperly.[48] But the evidence shows that Ukrainian officials understood that they were being used ''as a pawn in a U.S. re-election campaign.'' [49] It is hardly surprising that President Zelensky has publicly denied the existence of a quid pro quo given that Ukraine remains critically dependent on continued U.S. military and diplomatic support, and given that President Zelensky accordingly has a powerful incentive to avoid angering an already troubled President Trump.

President Trump's assertion that the evidence of a quid pro quo cannot be trusted because it is ''hearsay'' is incorrect.[50] The White House's readout of the July 25 phone call itself establishes that President Trump linked military assistance on President Zelensky's willingness to do him a ''favor''—which President Trump made clear was to investigate former Vice President Biden and alleged Ukrainian election interference.[51] One of the people who spoke directly to President Trump—and whose testimony therefore was not hearsay—was Ambassador Sondland, who confirmed the existence of a quid pro quo and provided some of the most damning testimony against President Trump.[52] Other witnesses provided compelling corroborating evidence of the President's scheme.[53]

President Trump's denials of the quid pro quo are, therefore, plainly false. There is a term for this type of self-serving denial in criminal cases—a ''false exculpatory''—which is strong evidence of guilt.[54] When a defendant ''intentionally offers an explanation, or makes some statement tending to show his innocence, and this explanation or statement is later shown to be false,'' such a false statement tends to show the defendant's consciousness of guilt.[55] President Trump's denial of the quid pro quo underscores that he knows his scheme to procure the sham investigations was improper, and that he is now lying to cover it up.

2. President Trump next argues that he withheld urgently needed support for Ukraine for reasons unrelated to his political interest.[56] But President Trump's asserted reasons for withholding the military aid and Oval Office meeting are implausible on their face.[57]

President Trump never attempted to justify the decision to withhold the military aid and Oval Office meeting on foreign policy grounds when it was underway. To the contrary, President Trump's lawyer Rudy Giuliani acknowledged about his Ukraine work that ''this isn't foreign policy.'' [58] President Trump sought to hide the scheme from the public and refused to give any explanation for it even within the U.S. government. He persisted in the scheme after his own Defense Department warned—correctly—that withholding military aid appropriated by Congress would violate federal law, and after his National Security Advisor likened the arrangement to a ''drug deal.'' [59] And he released the military aid shortly after Congress announced an investigation [60]—in other words, after he got caught. The various explanations that President Trump now presses are after-the-fact pretexts that cannot be reconciled with his actual conduct.[61]

The Anti-Corruption Pretext. The evidence shows that President Trump was actually indifferent to corruption in Ukraine before Vice President Biden became a candidate for President. After Biden's candidacy was announced, President Trump remained uninterested in anti-corruption measures in Ukraine beyond announcements of two sham investigations that would help him personally.[62] In fact, he praised a corrupt prosecutor and recalled a U.S. Ambassador known for her anti-corruption efforts. President Trump did not seek investigations into alleged corruption—as one would expect if anti-corruption were his goal—but instead sought only announcements of investigations—because those announcements are what would help him politically.

As Ambassador Sondland testified, President Trump ''did not give a [expletive] about Ukraine,'' and instead cared only about ''big stuff'' that benefitted him personally like ''the Biden investigation.'' [63] While President Trump asserts that he released the aid in response to Ukraine's actual progress on corruption,[64] in fact he released the aid two days after Congress announced an investigation into his misconduct. And President Trump's claim that the removal of the former Ukrainian prosecutor general encouraged him to release the aid is astonishing.[65] On the July 25 call with President Zelensky, President Trump praised that very same prosecutor—and Mr. Giuliani continues to meet with that prosecutor to try to dig up dirt on Vice President Biden to this day.[66]

The Burden-Sharing Pretext. Until his scheme was exposed, President Trump never attempted to attribute his hold on military aid to a concern about other countries not sharing the burden of supporting Ukraine.[67] One reason he never attempted to justify the hold on these grounds is that it is not grounded in reality. Other countries in fact contribute substantially to Ukraine. Since 2014, the European Union and European financial institutions have committed over $16 billion to Ukraine.[68]

In addition, President Trump *never even asked* European countries to increase their contributions to Ukraine as a condition for releasing the assistance. He released the assistance even though European countries did not change their contributions. President Trump's asserted concern about burden-sharing is impossible to credit given that he kept his own Administration in the dark about the issue for months, never made any contemporaneous public statements about it, never asked Europe to increase its contribution,[69] and released the aid without any change in Europe's contribution only two days after an investigation into his scheme commenced.[70]

The Burisma Pretext. The conspiracy theory regarding Vice President Biden and Burisma is baseless. There is no credible evidence to

support the allegation that Vice President Biden encouraged Ukraine to remove one of its prosecutors in an improper effort to protect his son. To the contrary, Biden was carrying out official U.S. policy—with bipartisan support—when he sought that prosecutor's ouster because the prosecutor was known to be corrupt.[71] In any event, the prosecutor's removal made it *more likely* that Ukraine would investigate Burisma, not less likely—a fact that President Trump does not attempt to dispute. The allegations against Biden are based on events that occurred in late 2015 and early 2016—yet President Trump only began to push Ukraine to investigate these allegations in 2019, when it appeared likely that Vice President Biden would enter the 2020 Presidential race to challenge President Trump's reelection.

The Ukrainian-Election-Interference Pretext. The Intelligence Community, Senate Select Committee on Intelligence, and Special Counsel Mueller all unanimously found that Russia—not Ukraine—interfered in the 2016 election. President Trump's own FBI Director confirmed that American law enforcement has ''no information that indicates that Ukraine interfered with the 2016 presidential election.''[72] In fact, the theory of Ukrainian interference is Russian propaganda—''a fictional narrative that is being perpetrated and propagated by the Russian security services themselves'' to drive a wedge between the United States and Ukraine.[73]

Thanks to President Trump, this Russian propaganda effort is spreading. In November, President Vladimir Putin said, ''Thank God no one is accusing us of interfering in the U.S. elections anymore; now they're accusing Ukraine.''[74] President Trump is correct in asserting ''that the United States has a compelling interest. . .in limiting the participation of foreign citizens in activities of American democratic self-government''[75]—and that is exactly why his misconduct is so harmful, and warrants removal from Office.

II. President Trump must be removed for obstructing congress

President Trump has answered the House's constitutional mandate to enforce its ''sole power of Impeachment''[76] with open defiance: obstructing this constitutional process wholesale by withholding documents, directing witnesses not to appear, threatening those who did, and declaring both the courts and Congress powerless to compel his compliance. As President Trump flatly stated, ''I have an Article II, where I have the right to do whatever I want as president.''[77] President Trump now seeks to excuse his obstruction by falsely claiming that he has been transparent and by hiding behind hypothetical executive privilege claims that he has never invoked and that do not apply.

A. President Trump's Claim of Transparency Ignores the Facts

President Trump does not appear to dispute that obstructing Congress during an impeachment investigation is itself an impeachable offense. He instead falsely insists that he ''has been extraordinarily transparent about his interactions with President Zelensky[].''[78]

President Trump's transparency claim bears no resemblance to the facts. In no uncertain terms, President Trump has stated that ''we're fighting all the subpoenas [from Congress].''[79] Later, through his White House Counsel, President Trump directed the entire Executive Branch to defy the House's subpoenas for documents in the impeachment—and as a result not a single document from the Executive Branch was produced to the House.[80] He also demanded that his current and former aides refuse to testify—and as a result nine Administration officials under subpoena refused to appear.[81] That is a cover-up, and there is nothing transparent about it.

President Trump emphasizes that he publicly released the memorandum of the July 25 call with President Zelensky. But President Trump did so only after the public had already learned that he had put a hold on military aid to Ukraine and after the existence of the Intelligence Community whistleblower complaint became public.[82] The fact that President Trump selectively released limited information under public pressure, only to obstruct the House's investigation into his corrupt scheme, does not support his assertion of transparency.

B. President Trump Categorically Refused to Comply with the House's Impeachment Inquiry

In an impeachment investigation, the House has a constitutional entitlement to information concerning the President's misconduct. President Trump's categorical obstruction would, if accepted, seriously impair the impeachment process the Framers carefully crafted to guard against Presidential misconduct.[83]

President Trump asserts that individualized disputes regarding responses to Congressional subpoenas do not rise to the level of an impeachable offense.[84] But this argument distorts the categorical nature of his refusal to comply with the House's impeachment investigation. President Trump has refused *any and all* cooperation and ordered his Administration to do the same. No President in our history has so flagrantly undermined the impeachment process.

President Nixon ordered ''[a]ll members of the White House Staff [to] appear voluntarily when requested by the committee,'' to ''testify under oath,'' and to ''answer fully all proper questions.''[85] Even so, the Judiciary Committee voted to impeach him for not *fully* complying with House subpoenas when he withheld complete responses to certain subpoenas on executive privilege grounds. The Committee emphasized that ''the doctrine of separation of powers cannot justify the withholding of information from an impeachment inquiry'' because ''the very purpose of such an inquiry is to permit the [House], acting on behalf of the people, to curb the excesses of another branch, in this instance the Executive.''[86] If President Nixon's obstruction of Congress raised a ''slippery slope'' concern, then President Trump's complete defiance takes us to the ''bottom of the slope, surveying the damage to our Constitution.''[87]

President Trump's attempt to fault *the House* for not using ''other tools at its disposal'' to secure the withheld information—such as seeking judicial enforcement of its subpoenas[88]—is astonishingly disingenuous. President Trump cannot tell the House that it must litigate the validity of its subpoenas while simultaneously telling the courts that they are powerless to enforce them.[89]

C. President Trump's Assertion of Invented Immunities Does Not Excuse His Categorical Obstruction

Having used the power of his office to stonewall the House's impeachment inquiry,

President Trump has now enlisted his lawyers in the White House Counsel's Office—and coopted his Department of Justice's Office of Legal Counsel—to justify the cover-up.[90] But his lawyers' attempts to excuse his obstruction do not work.

One fact is essential to recognize: President Trump *has never actually invoked executive privilege*. That is because, under long-standing law, invoking executive privilege would require President Trump to identify with particularity the documents or communications containing sensitive material that he seeks to protect. Executive privilege generally cannot be used to shield misconduct, and it does not apply here because President Trump and his associates have repeatedly and publicly discussed the same matters he claims must be kept secret.

President Trump instead maintains that his advisors should be ''absolutely immune'' from compelled Congressional testimony.[91] But this claim of absolute immunity—which turns on the theory that certain high-level Presidential advisors are ''alter egos'' of the President—cannot possibly justify the decision to withhold the testimony of the lower-level agency officials whom President Trump ordered not to testify. Regardless, the so-called absolute immunity theory is an invention of the Executive Branch, and every court to consider this argument has rejected it—including the Supreme Court in an important ruling requiring President Nixon to disclose the Watergate Tapes.[92] In other words, President Trump's defenses depend on arguments that disgraced former President Nixon litigated and lost.

President Trump additionally attempts to justify his obstruction on the ground that Executive Branch counsel were barred from attending House depositions.[93] Of course, the absence of counsel at depositions does not excuse the President's refusal to disclose documents in response to the House's subpoenas. And the decades-old rule excluding agency counsel from House depositions—first adopted by a Republican House of Representatives majority—exists for good reasons. It prevents agency officials implicated in Congressional investigations from misleadingly shaping the testimony of agency employees. It also protects the rights of witnesses to speak freely and without fear of reprisal[94]—a protection indisputably necessary here given that President Trump has repeatedly sought to intimidate and silence witnesses against him.[95]

President Trump finally maintains that complying with the impeachment inquiry would somehow violate the constitutional separation of powers doctrine.96 This argument is exactly backwards. The President cannot reserve the right to be the arbiter of his own privilege—particularly in an impeachment inquiry designed by the Framers of the Constitution to uncover Presidential misconduct. The fact that President Trump has found lawyers willing to concoct theories on which documents or testimony might be withheld is no basis for his refusal to comply with an impeachment inquiry. The check of impeachment would be little check at all if the law were otherwise.

III. The House conducted a constitutionally valid impeachment process

As explained in the House Managers' opening brief, the House conducted a full and fair impeachment proceeding with robust procedural protections for President Trump, which he tellingly chose to ignore. The Committees took 100 hours of deposition testimony from 17 witnesses with personal knowledge of key events, and all Members of the Committees as well as Republican and Democratic staff were permitted to attend and given equal opportunity to ask questions. The Committees heard an additional 30 hours of public testimony from 12 of those witnesses, including three requested by the Republicans.[97] President Trump's lawyers were invited to participate at the public hearings before the Judiciary Committee.[98] Rather than do so, he urged the House: ''if you are going to impeach me, do it now, fast, so we can have a fair trial in the Senate.''[99]

But faced with his Senate trial, President Trump now cites a host of procedural hurdles that he claims the House failed to satisfy. Nobody should be fooled by this obvious gamesmanship.

A. The Constitution Does Not Authorize President Trump to Second Guess the House's Exercise of Its ''Sole Power of Impeachment''

President Trump's attack on the House's conduct of its impeachment proceedings disregards the text of the Constitution, which gives the House the ''sole Power of Impeachment,'' [100] and empowers it to ''determine the Rules of its Proceedings.'' [101] As the Supreme Court has observed, ''the word 'sole' ''—which appears only twice in the Constitution—''is of considerable significance.'' [102] In the context of the Senate's ''sole'' power over impeachment trials, the Court stressed that this term means that authority is ''reposed in the Senate and nowhere else'' [103] and that the Senate ''alone shall have authority to determine whether an individual should be acquitted or convicted.'' [104] The House's ''sole Power of Impeachment'' likewise vests it with the independent authority to structure its impeachment proceedings in the manner it deems appropriate. The Constitution leaves no room for President Trump to object to how the House, in the exercise of its ''sole'' power to determine impeachment, conducted its proceedings here.

President Trump has no basis to assert that the impeachment inquiry was ''flawed from the start'' because it began before a formal House vote was taken.[105] Neither the Constitution nor the House rules requires such a vote.[106] And notwithstanding President Trump's refrain that the House's inquiry ''violated every precedent and every principle of fairness followed in impeachment inquiries for more than 150 years,'' [107] House precedent makes clear that an impeachment inquiry does not require a House vote. As even President Trump is forced to acknowledge, several impeachment inquiries conducted in the House ''did not begin with a House resolution authorizing an inquiry.'' [108] In fact, the House has impeached several federal judges without ever passing such a resolution [109]—and the Senate then convicted and removed them from office.[110] Here, by contrast, the House adopted a resolution confirming the investigating Committees' authority to conduct their inquiry into ''whether sufficient grounds exist for the House of Representatives to exercise its Constitutional power to impeach Donald John Trump, President of the United States of America.'' [111]

President Trump is similarly mistaken that a formal ''delegation of authority'' to the Committees was needed at the outset.[112] The House adopted its Rules [113]—''a power that the Rulemaking Clause [of the Constitution] reserves to each House alone'' [114]—but did not specify rules that would govern impeachment inquiries. It is thus difficult to understand how the House's impeachment inquiry could violate its rules or delegation authority. Not only did Speaker Pelosi instruct the Committees to proceed with an ''impeachment inquiry,'' [115] but in passing H. Res. 660, the full House ''directed'' the Committees to ''continue their ongoing investigations as part of the existing House of Representatives inquiry'' into impeachment.[116]

President Trump is wrong that the subpoenas were ''unauthorized and invalid'' because they were not approved in advance by the House.[117] There is no requirement in either the Constitution or the House Rules that the House vote on subpoenas. Indeed, such a requirement would be inconsistent with the operations of the House, which in modern times largely functions through its Committees.[118] The absence of specific procedures prescribing how the House and its Committees must conduct impeachment inquiries allows those extraordinary inquiries to be conducted in the manner the House deems most fair, efficient, and appropriate. But even assuming a House vote on the subpoenas was necessary, there was such a vote here. When it adopted H. Res. 660, the House understood that numerous subpoenas had already been issued as part of the impeachment inquiry. As the Report accompanying the Resolution explained, these ''duly authorized subpoenas'' issued to the Executive Branch ''remain in full force.'' [119]

B. President Trump Received Fair Process

As his lawyers well know, the various criminal trial rights that President Trump demands have no place in the House's impeachment process.[120] It is not a trial, much less a criminal trial to which Fifth or Sixth Amendment guarantees would attach. The rights President Trump has demanded have never been recognized in any prior Presidential impeachment investigation, just as they have never been recognized for a person under investigation by a grand jury—a more apt analogy to the House's proceedings here.

Although President Trump faults the House for not allowing him to participate in depositions and witness interviews, no President has ever been permitted to participate during this initial fact-finding process. For example, the Judiciary Committee during the Nixon impeachment found ''[n]o record . . . of any impeachment inquiry in which the official under investigation participated in the investigation stage preceding commencement of Committee hearings.'' [121] In both the President Nixon and President Clinton impeachment inquiries, the President's counsel was not permitted to participate in or even attend depositions and interviews of witnesses.[122] And in both cases, the House relied substantially on investigative findings by special prosecutors and grand juries, neither of which allowed the participation of the target of the investigation.[123] Indeed, the reasons grand jury proceedings are kept confidential—''to prevent subornation of perjury or tampering with the witnesses who may testify before grand jury'' and ''encourage free and untrammeled disclosures by persons who have information,'' [124]—apply with special force here, given President Trump's chilling pattern of witness intimidation.[125]

In his litany of process complaints, President Trump notably omits the fact that his counsel could have participated in the proceedings before the Judiciary Committee in multiple ways. The President, through his counsel, could have objected during witness examinations, cross-examined witnesses, and submitted evidence of his own.[126] President Trump simply chose not to have his counsel do so. Having deliberately chosen not to avail himself of these procedural protections, President Trump cannot now pretend they did not exist.

Nor is the President entitled to have the charges against him proven beyond a reasonable doubt.[127] That burden of proof is applicable in criminal trials, where lives and liberties are at stake, not in impeachments. For this reason, the Senate has rejected the proof-beyond-a-reasonable-doubt standard in prior impeachments [128] and instead has ''left the choice of the applicable standard of proof to each individual Senator.'' [129] Once again, President Trump's lawyers well know this fact.

President Trump's contention that the Articles of Impeachment must fail on grounds of ''duplicity'' is wrong. President Trump alleges that the Articles are ''structurally deficient'' because they ''charge[] multiple different acts as possible grounds for sustaining a conviction.'' [130] But this simply repeats the argument from the impeachment trial of President Clinton, which differed from President Trump's impeachment in this critical respect. Where the articles charged President Clinton with engaging in ''one or more'' of several acts,[131] the Articles of Impeachment against President Trump do not. This difference distinguishes President Trump's case from President Clinton's—where, in any event, the Senate rejected the effort to have the articles of impeachment dismissed as duplicitous. The bottom line is that the House knew precisely what it was doing when it drafted and adopted the Articles of Impeachment against President Trump, and deliberately avoided the possible problem raised in the impeachment proceedings against President Clinton.

There was no procedural flaw in the House's impeachment inquiry. But even assuming there were, that would be irrelevant to the Senate's separate exercise of its ''sole Power to try all Impeachments.'' [132] Any imagined defect in the House's previous proceedings could be cured when the evidence is presented to the Senate at trial. President Trump, after all, touted his desire to ''have a fair trial in the Senate.'' [133] And as President Trump admits, it is the Senate's ''constitutional duty to decide for itself all matters of law and fact bearing upon this trial.'' [134] Acquitting President Trump on baseless objections to the House's process would be an abdication by the Senate of this duty.

Respectfully submitted,

United States House of Representatives
ADAM B. SCHIFF,
JERROLD NADLER,
ZOE LOFGREN,
HAKEEM S. JEFFRIES
VAL BUTLER DEMINGS
JASON CROW,
SYLVIA R. GARCIA.
U.S. House of Representatives Managers.

January 21, 2020.

The House Managers wish to acknowledge the assistance of the following individuals in preparing this reply memorandum: Douglas N. Letter, Megan Barbero, Josephine Morse, Adam A. Grogg, William E. Havemann, Jonathan B. Schwartz, Christine L. Coogle, Lily Hsu, and Nate King of the House Office of General Counsel; Daniel Noble, Daniel S. Goldman, and Maher Bitar of the House Permanent Select Committee on Intelligence; Norman L. Eisen, Barry H. Berke, Joshua Matz, and Sophia Brill of the House Committee on the Judiciary; the investigative staff of the House Committee on Oversight and Reform; and David A. O'Neil, Anna A. Moody, David Sarratt, Laura E. O'Neill, and Elizabeth Nielsen.

ENDNOTES

1. U.S. Const., Art. II, §4.
2. U.S. Const., Art. I, §2, cl. 5.
3. *See* Alan Dershowitz, *The Case Against Impeaching Trump* 26–27 (2018).
4. *See, e.g.*, Jonathan Turley, Written Statement, *The Impeachment Inquiry into President Donald J. Trump: The ''Constitutional Basis'' for Presidential Impeachment* 10–11 (Dec. 4, 2019), https://perma.cc/92PY-MBVY; Charlie Savage, '*Constitutional Nonsense*': *Trump's Impeachment Defense Defies Legal Consensus,* N.Y. Times (Jan. 20, 2020), https://perma.cc/76TD-94XT.
5. Statement of Material Facts ¶121 (Jan. 18, 2020) (Statement of Facts) (filed as an attachment to the House's Trial Memorandum).
6. Trial Memorandum of President Donald J. Trump at 13 (Jan. 20, 2020) (Opp.).
7. As the then-House Managers explained in President Clinton's impeachment trial, ''[t]he 25th Amendment to the Constitution ensures that impeachment and removal of a President would not overturn an election because it is the elected Vice President who

would replace the President not the losing presidential candidate.'' Reply of the U.S. House of Representatives to the Trial Mem. of President Clinton, *in Proceedings of the United States Senate in the Impeachment Trial of President Willian Jefferson Clinton, Volume II: Floor Trial Proceedings*, S. Doc. No. 106–4, at 1001 (1999).

8. Statement of Facts ¶164.

9. Opp. at 57 n.383.

10. Opp. at 1–2.

11. George Washington, Farewell Address (Sept. 19, 1796), *George Washington Papers, Series 2, Letterbooks 1754–1799: Letterbook 24, April 3, 1793–March 3, 1797*, Library of Congress.

12. 2 *The Records of the Federal Convention of 1787*, at 66 (Max Farrand ed., 1911).

13. *Id*. at 550.

14. *The Federalist No. 65* (Alexander Hamilton); *see The Federalist Nos. 68* (Alexander Hamilton); *The Federalist No. 69* (Alexander Hamilton).

15. Opp. at 14–16.

16. Raoul Berger, *Impeachment: The Constitutional Problems* 67–69 (1973).

17. 2 Joseph Story, Commentaries on the Constitution of the United States § 762 (1833). The President's brief selectively quotes Blackstone's *Commentaries* for the proposition that impeachment in Britain required a violation of ''known and established law.'' Opp. at 15. But that reflected the well-known and established nature of the parliamentary impeachment process, not some requirement that the underlying conduct violate a then-existing law. *See also* 4 William Blackstone, *Commentaries on the Law of England* *5 n.7 (1836) (''The word *crime* has no technical meaning in the law of England. It seems, when it has a reference to positive law, to comprehend those acts which subject the offender to punishment. When the words *high crimes and misdemeanors* are used in prosecutions by impeachment, the words *high crimes* have no definite signification, but are used merely to give greater solemnity to the charge.'').

18. *Impeachment of Richard M. Nixon, President of the United States: Report of the Comm. on the Judiciary, H. of Representatives*, H. Rep. No. 93–1305, at 139 (1974).

19. *See id*. at 136.

20. *Proceedings of the U.S. Senate and the House of Representatives in the Trial of Impeachment of Robert W. Archbald*, Vol. II, S. Doc. No. 62–1140, at 1399 (1913).

21. *Extracts from the Journal of the U.S. Senate in All Cases of Impeachment Presented by the House of Representatives*, 1798–1904, S. Doc. No. 62–876, at 20–22 (1912).

22. S. Doc. No. 62–1140, at 1401 (1913) (citing 15 T*he American and English Encyclopedia of Law* 1066 (John Houston Merrill ed., 1891)).

23. *See* Thomas M. Cooley, *The General Principles of Constitutional Law* 159 (1880).

24. 2 Story § 788.

25. *Id*. § 762.

26. James Walker, *Alan Dershowitz Said a ''Technical Crime'' Wasn't Needed for Impeachment in Resurfaced 1998 Interview*, Newsweek (Jan. 20, 2020), https://perma.cc/6JCG-2GDW (*Dershowitz 1998 Interview*).

27. Dershowtiz at 26–27.

28. Opp. at 14.

29. *Impeachment of Donald J. Trump, President of the United States: Report of the Comm. on the Judiciary of the H. of Representatives, together with Dissenting Views*, to Accompany H. Res. 755, H. Rep. No. 116–346, at 42 n. 207 (2019) (quotation marks omitted); see 2 Story § 794. Notably, President Trump's counsel, Professor Dershowitz, indicated in a recent television appearance that he and Professor Tribe agree on this point. *See Dershowitz 1998 Interview*, https://perma.cc/6JCG-2GDW.

30. *See, e.g., Gilmore v. Lewis*, 12 Ohio 281, 286 (1843) (For ''public officers, . . . [i]t is an indictable offence, in them, to exact and receive any thing, but what the law allows, for the performance of their legal duties,'' because ''at common law, being against sound policy, and, *quasi*, extortion.''); accord *Kick v. Merry*, 23 Mo. 72, 75 (1856); *United States v. Matthews*, 173 U.S. 381, 384–85 (1899) (collecting cases).

31. *Matter of Office of Mgmt. & Budget—Withholding of Ukraine Sec. Assistance*, B–331564 (Comp. Gen. Jan. 16, 2020), https://perma.cc/5CDX-XLX6.

32. Opp. at 28.

33. *Cramer v. United States*, 325 U.S. 1, 30–31 (1945) (Treason); *United States v. Sun-DiamondGrowers of California*, 526 U.S. 398, 404–05 (1999) (Bribery).

34. Opp. at 30.

35. *See* H. Rep. No. 93–1305 (1974).

36. *Ex Parte Grossman*, 267 U.S. 87, 122 (1925) (the President could be impeached for using his pardon power in a manner that destroys the Judiciary's power to enforce its orders).

37. Statement of Facts ¶114.

38. Opp. at 81.

39. Statement of Facts ¶121.

40. *Id*.

41. *Id*. ¶118.

42. *Id*. ¶101.

43. *Id*. ¶52.

44. Transcript, *Impeachment Inquiry: Ambassador William B. Taylor and George Kent: Hearing Before the H. Permanent Select Comm. on Intelligence*, 116th Cong. 35 (Nov. 13, 2019) (statement of Ambassador Taylor).

45. Transcript, *Impeachment Inquiry: Fiona Hill and David Holmes: Hearing Before the H. Permanent Select Comm. on Intelligence*, 116th Cong. 18–19 (Nov. 21, 2019) (statement of Mr. Holmes) (''[I]t was made clear that some action on Burisma/Biden investigation was a precondition for an Oval Office visit.'').

46. *See* Opp. at 87–88.

47. Statement of Facts ¶114.

48. Opp. at 84–85.

49. Statement of Facts ¶68.

50. Opp. at 87.

51. Statement of Facts ¶ 75–80.

52. *See, e.g., id*. ¶52.

53. *See, e.g., id*. ¶49–67.

54. *See, e.g., United States v. Kahan*, 415 U.S. 239, 240–41 (1974) (per curiam).

55. *United States v. Penn*, 974 F.2d 1026, 1029 (8th Cir. 1992).

56. Opp. at 89.

57. As the Supreme Court reiterated in rejecting a different pretextual Trump Administration scheme, when reviewing the Executive's conduct, it is not appropriate ''to exhibit a naiveté from which ordinary citizens are free.'' *Dep't of Commerce v. New York*, 139 S. Ct. 2551, 2575 (2019) (quoting *United States v. Stanchich*, 550 F.2d 1294, 1300 (2d Cir. 1977) (Friendly, J.)).

58. Statement of Facts ¶18. President Trump's brief never addresses the role of Mr. Giuliani, who served as President Trump's principal agent in seeking an announcement of the investigations.

59. *Id*. 59.

60. *Id*. 131.

61. After Congress began investigating President Trump's conduct, the White House Counsel's Office reportedly conducted an internal review of ''hundreds of documents,'' which ''reveal[ed] extensive efforts to generate an after-the-fact justification'' for the hold ordered by President Trump. Josh Dawsey et al., *White House Review Turns Up Emails Showing Extensive Effort to Justify Trump's Decision to Block Ukraine Military Aid*, Wash. Post (Nov. 24, 2019), https://perma.cc/99TX-5KFE. These documents would be highly relevant in this Senate trial.

62. *See* Statement of Facts ¶88.

63. *Id*. ¶88.

64. Opp. at 94–95.

65. Opp. at 94.

66. Statement of Facts ¶81, 144–45.

67. *See id*. ¶¶41–48.

68. *See id*. ¶¶30–32.

69. *See id*.

70. *See id*. ¶131.

71. *Id*.

72. Id. ¶13.

73. Id. ¶14.

74. *'Thank God': Putin thrilled U.S. 'political battles' over Ukraine taking focus off Russia*, Associated Press (Nov. 20, 2019), https://perma.cc/7ZHY-44CY.

75. Opp. at 100.

76. U.S. Const., Art. I, §2, cl. 5.

77. Statement of Facts ¶164.

78. Opp. at 35.

79. Statement of Facts ¶164.

80. *Id*. ¶¶179–83.

81. *Id*. ¶¶186–87.

82. *See* Michael D. Shear & Maggie Haberman, *Do Us a Favor'': Call Shows Trump's Interest in Using U.S. Power for His Gain*, N.Y. Times (Sept. 25, 2019), https://perma.cc/B7P9–BPK2; Karoun Demirjian et al., *Trump Ordered Hold on Military Aid Days Before Calling Ukrainian President, Officials Say*, Wash. Post (Sept. 23, 2019), https://perma.cc/N7PQ-K9WB; Letter from Michael K. Atkinson, Inspector Gen. of the Intelligence Community, to Chairman Adam Schiff, House Permanent Select Comm. on Intelligence, and Ranking Member Devin Nunes, House Permanent Select Comm. on Intelligence (Sept. 9, 2019), https://perma.cc/K78N-SMRR.

83. *See The Federalist No. 69* (Alexander Hamilton).

84. Opp. at 48–54.

85. Remarks by President Nixon (Apr. 17, 1973), *reprinted in Statement of Information: Hearings Before the Comm. on the Judiciary, H. of Representatives: Book IV—Part 2, Events Following the Watergate Break-in* (1974).

86. H. Rep. No. 93–1305, at 208 (1974).

87. H. Rep. No. 116–346, at 161. President Trump's new lawyer, Kenneth Starr similarly argued that President Clinton's assertion of executive privilege in grand jury proceedings, which ''thereby delayed any potential congressional proceedings,'' constituted conduct ''inconsistent with the President's Constitutional duty to faithfully execute the laws. *Communication from Kenneth W. Starr, Independent Counsel, Transmitting a Referral to the United States House of Representatives Filed in Conformity with the Requirements of Title 28, United States Code, Section 595(c)*, H. Doc. No. 105–310, at 129, 204 (1998).

88. Opp. at 48–49 & n.336.

89. *See* Statement of Facts 192; Def.'s Mot. to Dismiss, or in the Alternative, for Summ. J. at 20, *Kupperman v. U.S. House of Representatives*, No. 19–3224 (D.D.C. Nov. 14, 2019), ECF No. 40; Defs.' and Def.-Intervenors' Mot. to Dismiss at 46–47, *Comm. on Ways & Means v. U.S. Dep't of the Treasury*, No. 19–1974 (D.D.C. Sept. 6, 2019), ECF No. 44; *see also* Brief for Def.-Appellant at 2, 3233, *Comm. on the Judiciary v. McGahn*, No. 19–5331 (D.C. Cir. Dec. 9, 2019).

90. Opp. app'x C (*House Committees' Authority to Investigate for Impeachment*, 44 Op. O.L.C. (2020)) at 1–2, 37 (opining that the House's impeachment investigation was not authorized under the House's ''sole Power of Impeachment,'' U.S. Const., Art. I, §2, cl. 5).

91. *See* Opp. at 43–44.

92. *See United States v. Nixon*, 418 U.S. 683, 706 (1974) (''neither the doctrine of separation of powers, nor the need for confidentiality of high-level communications, without more, can sustain an absolute, unqualified Presidential privilege of immunity from judicial process'').

93. Opp. at 46–47.

94. *See* H. Rep. No. 116–346, at 544.

95. *See, e.g.*, Statement of Facts ¶190.

96 Opp. at 36; *see id*. at 48–54.

97. *See* Statement of Facts ¶¶ 188–89; H. Rep. No. 116–346, at 130.
98. Statement of FactsA6.176.
99. H. Rep. No. 116–346, at 12 (quoting Letter from Pat A. Cipollone, Counsel to the President, to Jerrold Nadler, Chairman, H. Comm. on the Judiciary (Dec. 6, 2019)).
100. U.S. Const., Art. I, §2, cl. 5.
101. U.S. Const., Art. I, §5, cl. 2.
102. *Nixon v. United States*, 506 U.S. 224, 230 (1993).
103. *Id.* at 229.
104. *Id.* at 231.
105. Opp. at 4.
106. One district court presented with this same argument recently concluded that ''[i]n cases of presidential impeachment, a House resolution has never, in fact, been required to begin an impeachment inquiry,'' explaining that the argument ''has no textual support in the U.S. Constitution [or] the governing rules of the House.'' *In re Application of Comm. on Judiciary, U.S. House of Representatives, for an Order Authorizing Release of Certain Grand Jury Materials*, No. 19–48 (BAH), 2019 WL 5485221, at *27 (D.D.C. Oct. 25, 2019). Although both President Trump and the Office of Legal Counsel of the Department of Justice go to great lengths to criticize the district court's analysis, *see, e.g.*, Opp. app'x C at 38 n.261, the Department of Justice tellingly has declined to advance these arguments in litigation on the appeal of this decision.
107. Opp. at 1.
108. Opp. at 41.
109. *See In re Application of Comm. on Judiciary*, 2019 WL 5485221, at *26 (citing proceedings relating to Judges Walter Nixon, Alcee Hastings, and Harry Claiborne).
110. *See Proceedings in the United States Senate in the Impeachment Trial of Walter Nixon, Jr., a Judge of the United States District Court for the Southern District of Mississippi*, S. Doc. No. 101–22, at 439 (1989); *Proceedings of the United States Senate in the Impeachment Trial of Alcee L. Hastings, a Judge of the United States District Court for the Southern District of Florida*, S. Doc. No. 101–18, at 705 (1989); *Proceedings of the United States Senate in the Impeachment Trial of Harry E. Claiborne, a Judge of the United States District Court for the District of Nevada*, S. Doc. No. 99–48, at 298 (1986).
111. H. Res. 660, 116th Cong. (2019); Statement of Facts ¶ 162.
112. *See* Opp. at 37–38.
113. *See* H. Res. 6, 116th Cong. (2019).
114. *Barker v. Conroy*, 921 F.3d 1118, 1130 (D.C. Cir. 2019) (quotation marks omitted).
115. Statement of Facts ¶ 161.
116. *Id.* ¶ 162; *see* H. Res. 660.
117. Opp. at 37; *see* Opp. at 41.
118. *See, e.g.*, House Rule XI.1(b)(1) (authorizing standing committees of the House to ''conduct at any time such investigations and studies as [they] consider[] necessary or appropriate''); *see also id.* X1.2(m)(1)(B) (authorizing committees to ''require, by subpoena or otherwise, the attendance and testimony of such witnesses and the production of such books, records, correspondence, memoranda, papers, and documents as [they] consider[] necessary'').
119. *Directing Certain Committees to Continue Their Ongoing Investigations as Part of the Existing House of Representatives Inquiry into Whether Sufficient Grounds Exist for the House of Representatives to Exercise its Constitutional Power to Impeach Donald John Trump, President of the United States of America, and for Other Purposes*, H. Rep. No. 116–266, at 3 (2019).
120. Opp. at 57.
121. H. Rep. No. 116–346, at 19 (quoting Impeachment Inquiry Staff, H. Comm. on the Judiciary, *Memorandum: Presentation Procedures for the Impeachment Inquiry* 11, 93d Cong. (1974)).
122. *Id.* at 19, 21.
123. *See id.* at 17–22.
124. *United States v. Procter & Gamble Co.*, 356 U.S. 677, 681 n.6 (1958).
125. Statement of Facts ¶¶ 177, 190.
126. Statement of Facts ¶ 163; 165 Cong. Rec. E1357 (2019) (Impeachment Inquiry Procedures in the Committee on the Judiciary Pursuant to H. Res. 660); *see id.* at (A)(3), (B)(2)–(3), (C)(1)–(2), (4).
127. Opp. at 20–21.
128. *See, e.g.*, 132 Cong. Rec. S29124–94 (daily ed. October 7, 1986).
129. Cong. Research Serv., 98–990 A, *Standard of Proof in Senate Impeachment Proceedings* 6 (1999), https://perma.cc/9YKG-TJLH.
130. Opp. at 107–09.
131. H. Res. 611, 105th Cong. (1998).
132. U.S. Const., Art. I, §3, cl. 6. *See also Nixon v. United States*, 506 U.S. 224, 229–31 (1993).
133. H. Rep. No. 116–346, at 12 (quoting Letter from Pat A. Cipollone, Counsel to the President, to Jerrold Nadler, Chairman, H. Comm. on the Judiciary (Dec. 6, 2019)).
134. Opp. at 13.

The CHIEF JUSTICE. I note the presence in the Senate Chamber of the managers on the part of the House of Representatives and counsel for the President of the United States.

The majority leader is recognized.

PRIVILEGES OF THE FLOOR

Mr. MCCONNELL. Mr. Chief Justice, I send to the desk a list of floor privileges for closed sessions. It has been agreed to by both sides. I ask that it be inserted in the RECORD and agreed to by unanimous consent.

The CHIEF JUSTICE. Without objection, it is so ordered.

FLOOR PRIVILEGES DURING CLOSED SESSION

Sharon Soderstrom, Chief of Staff, Majority Leader
Scott Raab, Deputy Chief of Staff, Majority Leader
Andrew Ferguson, Chief Counsel, Majority Leader
Robert Karem, National Security Advisor, Majority Leader
Stefanie Muchow, Deputy Chief of Staff, Majority Leader (Cloakroom only)
Nick Rossi, Chief of Staff, Assistant Majority Leader
Mike Lynch, Chief of Staff, Democratic Leader
Erin Vaughn, Deputy Chief of Staff, Democratic Leader
Mark Patterson, Counsel, Democratic Leader
Reginald Babin, Counsel, Democratic Leader
Meghan Taira, Legislative Director, Democratic Leader
Gerry Petrella, Policy Director, Democratic Leader
Reema Dodin, Deputy Chief of Staff, Democratic Whip
Dan Schwager, Counsel, Secretary of the Senate
Mike DiSilvestro
Pat Bryan, Senate Legal Counsel
Morgan Frankel, Deputy Senate Legal Counsel
Krista Beal, ASAA, Capitol Operations, (Bob Shelton will substitute for Krista Beal if needed)
Jennifer Hemingway, Deputy SAA
Terence Liley, General Counsel
Robert Shelton, Deputy ASAA, Capitol Operations*
Brian McGinty, ASAA, Office of Security and Emergency Preparedness
Robert Duncan, Assistant Majority Secretary
Tricia Engle, Assistant Minority Secretary
Leigh Hildebrand, Assistant Parliamentarian
Christy Amatos, Parliamentary Clerk
Mary Anne Clarkson, Senior Assistant Legislative Clerk
Megan Pickel, Senior Assistant Journal Clerk
Adam Gottlieb, Assistant Journal Clerk
Dorothy Rull, Chief Reporter
Carole Darche, Official Reporter
Diane Dorhamer, Official Reporter
Chantel Geneus, Official Reporter
Andrea Huston, Official Reporter
Catalina Kerr, Official Reporter
Julia LaCava, Official Reporter
Michele Melhorn, Official Reporter
Shannon Taylor-Scott, Official Reporter
Adrian Swann, Morning Business Coordinator
Sara Schwartzman, Bill Clerk
Jeff Minear, Counselor to the Chief Justice

PROGRAM

Mr. MCCONNELL. Mr. Chief Justice, for the further information of all Senators, I am about to send a resolution to the desk that provides for an outline of the next steps in these proceedings. It will be debatable by the parties for 2 hours, equally divided. Senator SCHUMER will then send an amendment to the resolution to the desk. Once that amendment has been offered and recorded, we will have a brief recess. When we reconvene, Senator SCHUMER's amendment will be debatable by the parties for 2 hours. Upon the use or yielding back of time, I intend to move to table Senator SCHUMER's amendment.

PROVIDING FOR RELATED PROCEDURES CONCERNING THE ARTICLES OF IMPEACHMENT AGAINST DONALD JOHN TRUMP, PRESIDENT OF THE UNITED STATES

Mr. Chief Justice, I send a resolution to the desk and ask that it be read.

The CHIEF JUSTICE. The clerk will read the resolution.

The legislative clerk read as follows:

A resolution (S. Res. 483) to provide for related procedures concerning the articles of impeachment against Donald John Trump, President of the United States.

Resolved, That the House of Representatives shall file its record with the Secretary of the Senate, which will consist of those publicly available materials that have been submitted to or produced by the House Judiciary Committee, including transcripts of public hearings or markups and any materials printed by the House of Representatives or the House Judiciary Committee pursuant to House Resolution 660. Materials in this record will be admitted into evidence subject to any hearsay, evidentiary, or other objections that the President may make after opening presentations are concluded. All materials filed pursuant to this paragraph shall be printed and made available to all parties.

The President and the House of Representatives shall have until 9 a.m. on Wednesday, January 22, 2020, to file any motions permitted under the rules of impeachment with the exception of motions to subpoena witnesses or documents or any other evidentiary motions. Responses to any such motions shall be filed no later than 11 a.m. on Wednesday, January 22, 2020. All materials filed pursuant to this paragraph shall be